EUROPEAN COMMUNITIES' COMMON AGRICULTURAL POLICY, THE SUBSIDIES CODE, AND ENFORCEMENT OF U.S. RIGHTS UNDER TRADE AGREEMENTS

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

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EUROPEAN COMMUNITIES' COMMON AGRICULTURAL POLICY, THE SUBSIDIES CODE, AND ENFORCEMENT OF U.S. RIGHTS UNDER TRADE AGREEMENTS

THURSDAY, FEBRUARY 11, 1981

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2221, Dirksen Senate Office Building, Hon. John Danforth (chairman of the subcommittee) presiding.

Present: Senators Danforth, Heinz, Grassley, Long, Bentsen, and Baucus.

[The committee press release follows:]

[Press Release No. 82-105]

SENATE FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE SCHEDULES HEARINGS ON THE EFFECTIVENESS OF SECTION 301 AND THE SUBSIDIES CODE

The Honorable John C. Danforth (R., Mo.), Chairman of the Subcommittee on International Trade of the Committee on Finance announced today that on February 11, 1982, the Subcommittee will hold a hearing to review the operation of section 301 of the Trade Act of 1974 (U.S.C. 2411) and the implementation of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code). Chairman Danforth stated that the hearing will emphasize the relationship between the use of section 301 and the Subsidies Code and the Common Agricultural Policy of the European Communities.

The hearing will begin at 9:30 a.m. in Room 2221 of the Dirksen Senate Office Building.

Chairman Danforth stated that administration witnesses are expected to testify. Public witnesses are also invited to request to testify.

Witnesses and those submitting written statements are requested in particular to address the following issues, among others they may wish to discuss:

(1) The effectiveness of section 301 in enforcing the trade agreement rights of the United States and responding to foreign practices that are inconsistant with trade agreement provisions or unjustifiably burden or restrict U.S. commerce;

(2) the meaning of Article 10 of the Subsidies Code;

(3) the utility and effectiveness of the illustrative list of export subsidies contained in the annex to the Subsidies Code for the purpose of improving U.S. agricultural exports; and

(4) the effect of subsidies paid under the Common Agricultural Policy on the volume of the prices paid for U.S. agricultural exports.

Chairman Danforth also requested witnesses to address S. 1511, introduced by Senator Heinz to clarify the determination of the definition of a country under the agreement, and for other purposes.

Senator DANFORTH. This morning hearing seeks to obtain an answer to a fundamental question, namely, whether the laws of the United States, particularly section 301 of the Trade Act of 1974, and the multilateral trade agreements, particularly the subsidies code, provide a satisfactory means of insuring that our farmers can compete fairly in foreign markets. Certainly questions exist whether they do.

The merchandise trade figures released by the Department of Commerce last Friday indicated that the volume of our agricultural exports in the fourth quarter of 1981 increased by 9 percent over the preceding quarter. The value of these exports rose by only 4 percent, however. It is clear that our farmers who are the most competitive and productive in the world are exporting more and receiving less.

What causes this situation? The convenient short explanation is that excess supply has led to soft market conditions. Our farmers who the pay price for these soft market conditions want and deserve more of an explanation. They want to know how less competitive producers can continue to produce excess quantities of agricultural products and then sell them on the world market at depressed prices. They want to know if this is fair and, if not, what can be done to protect them.

Section 301 of the Trade Act of 1974 is the principal authority which the President has to take action against foreign unfair trade practices. As the bill, which I introduced yesterday, indicated, however, I believe that this provision needs to be strengthened to insure that the President has adequate authority to deal with unfair practices faced by our producers.

From 1974 to 1979, 19 cases were initiated under section 301. Because there were no time limits in the law, many of these cases dragged on for years, some are still not resolved. Section 301 was amended by the Trade Agreements Act of 1979 to provide time limits which will insure timely action on section 301 complaints. Thus far the amended procedures have worked to provide more timely action on complaints. On the basis of these complaints, the administration is actively pursuing our international rights. It is my hope that they will continue the same intensive efforts.

Not surprisingly, five of the seven cases currently under consideration relate to EC policies under the Common Agricultural Policy.

The EC has made a fundamental decision to support employment in the agricultural sector and encourage self-sufficiency in food stuffs. One cannot quarrel with the EC's prerogative to determine their own internal policy, however, this program is implemented in a manner which is extremely harmful to our farmers.

The high intervention prices paid by the EC on unlimited quantities of produce has resulted in production well beyond internal needs. In wheat, for example, the EC produced less than 88 percent of its needs in 1960 and 1961, but in 1980 and 1981 it produced 25 percent more than its needs.

Because the intervention price at which the EC is forced to buy excess production is generally well above world prices, products can only be sold on world markets with the aid of subsidies. To the extent that the EC continues this policy of subsidizing ever increas-

ing quantities of export, I expect that the United States will continue to protest under the subsidies code. I am hopeful that the code will prove effective in protecting our farmers against these types of practices.

I would appreciate hearing from our witnesses this morning just how helpful they think it will be. I would also appreciate hearing any suggestions they might have as to what alternative courses of action may be available to protect our legitimate agricultural interests.

The undoubted leader in the Senate in this area has been Senator Bentsen, who has made an extensive study of the effect of the subsidies by the European Community in agriculture, and the effect those subsidies have on our own agricultural community. He has spoken on this subject many times before the Senate.

Senator Bentsen.

Senator BENTSEN. Thank you for calling this hearing. I asked for this hearing because I just don't believe that the American people understand the stark realities of the problems facing the American farmer and how closely those problems for the American farmer are related to some of our failures in the international trade area.

The American farmer is the most successful producer of agricultural products in the world. He produces enough food not just for himself but for 52 other Americans, and then he has enough left over to provide exports for 26 other people around the world; yet that is not a success story. The American farmer is going broke.

The American farmer's income today, after inflation, is the lowest since the Great Depression. Farm prices have been falling since January of last year. We have 16,000 farmers in my State of Texas who borrow from the Farmers Home Administration, and that is the lender of last resort, yet approximately 35 percent of those farmers' loans are delinquent.

The American farmer has been told to produce for the world market, he has been told to export, but then he has been shut out of the markets. Embargoes and threats of embargoes, nontariff trade barriers, illegal export subsidies, all of those have hurt his markets. Through no fault of his own, he has been labeled an unreliable supplier, and that has got to stop.

This Government must give the American farmer the support he needs and deserves for marketing his product. The farmer should not be forced to pay for the foreign policy of this Nation. The State Department ought to be working for the American farmer, not the American farmer working for the State Department. We should identify agricultural trade problems, and we should move to deal with them.

Look at the problems we have with the European Common Market, with their agricultural policy. The EC puts an artificially high price on their farm commodities and then they dump the excess on the world market, undercutting American farm products.

They tell the European exporter to sell commodities on the world market at whatever price they will bring, and then the EC will make up the difference between the price you receive and our artificially high European price. That is a tremendous problem for the American farmer. He is not competing against a European farmer,

he is competing against a European government. He is competing against the European treasury.

Secretary of Agriculture Block has estimated that these EC subsidies are going to cost the American wheat farmer some 50 cents a bushel, and it costs the U.S. Treasury $400 million in wheat deficiency payments. We have laws to deal with these problems. We have international agreements, but they are not being used to the extent they should by the executive departments.

We are finally moving forward with some section 301 complaints, but we are still pursuing 301 cases only where the industry has filed a complaint. Why? Why shouldn't the Special Trade Representative seek out and file 301 cases on his own?

Why shouldn't our Government take an active role in enforcing international trade laws, and halting unfair trade practices that are hurting us in agriculture and industry?

I want the international trade system to work, and to work fairly for the American farmer and for industries. I don't think it is doing that now. But it can be made to work, and it must be made to work, if our economy, particularly our agricultural economy, is to prosper and to grow.

A fundamental commitment of our Government should be to provide an environment in which every man and woman and teenager can find a job. I don't mean make work or dead end jobs, but productive jobs that give people a chance for a step up in an expanding and a growing economy.

But those jobs won't come until our economy is back on track, and that means putting a stop to soaring deficits, and inflation, and bringing interest rates down to where families, especially young families, can afford to buy a home where they can put down roots and help build a community, a community that they will be proud of, where they can raise their children and send them to school to prepare them to be skilled, contributing citizens.

We are a trading Nation, we must recognize the importance of that trade to our economy, and to take the steps to assert our rights in international trade. That is particularly important to farmers who are asked to produce for a free market, and then find that they are not in a free market that they can sell in. Farmers really don't want more loans, they just want reasonable prices for their products, and they cannot get that under the current circumstances.

I hope that the witnesses at this hearing will speak to these problems, to our international agreements, how we can use them to enforce our rights, so U.S. wheat and poultry can compete fairly with EC products in the Middle East, so that U.S. beef can be sold in the EC in the amounts of our negotiated quota, so that Texas citrus will be treated the same as the Mediterranean citrus in the EC, so that the American farmer can get a fair price for products in the marketplace.

So that we don't run into the kind of situation that I ran into, Mr. Chairman, in Geneva the last time, where I had the U.S. negotiator coming over to me and saying, "Well, we took care of you on citrus." Then I had the negotiator from England telling me that they had done the same thing.

Then when I took a look at it to see how they had taken care of Texas citrus I will tell you what they did. I don't recall the exact numbers, but I do remember that they cut the import duty from about 30 percent to 20 or 15 percent. They said, "See what we did."

But as I looked at it, they did it for those months when we don't have any citrus to sell in Texas. They did it in those months when the blossom is just turning into the little piece of fruit that will finally be marketed in the fall when they again raise their duties on us. That kind of stuff just has to end.

I am delighted to see our former colleague here, a very able Ambassador and Trade Representative. I appreciate his coming because he knows of my concerns, and he has been responsive to them.

Thank you very much, Mr. Chairman.

Senator DANFORTH. Senator Heinz.

Senator HEINZ. Mr. Chairman, before I make a comment on this hearing, I want to note that the radio this morning had some earthshaking news, today is Lloyd Bentsen's birthday.

Senator BENTSEN. We made another one.

Senator HEINZ. Happy Birthday, Lloyd.

Senator BENTSEN. Thank you, John.

Senator HEINZ. Mr. Chairman, today's hearing is for the purpose of examining the effectiveness of section 301 of the Trade Act of 1974, and the implementation of our subsidies code, particularly with respect to combatting the European agricultural subsidies, which Senator Bentsen has spoken on quite clearly, quite eloquently, and quite significantly .

This question, of course, does have broader application than just to EC agricultural policies alone. I would note in passing that in addition to the 301 cases against the EC on agricultural products, the domestic specialty steel industry has filed a petition, which I hope Ambassador Brock will shortly accept. It is concerned with EC subsidies on steel.

I would like to ask unanimous consent, Mr. Chairman, to insert in the record, at the appropriate point, the statement of Dr. Adolf J. Lena, Chairman of the Advisory Committee on Specialty Steel of the United States before the ITC.

Senator DANFORTH. Without objection.

[Statement of Dr. Lena follows:]

STATEMENT OF DR. ADOLPH J. LENA, CHAIRMAN, ADVISORY COMMITTEE SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Mr. Chairman: I am Dr. Adolph J. Lena, Chairman of the Advisory Committee, Specialty Steel Industry of the United States and Chairman of the Board and Chief Executive Officer of the AL Tech Specialty Steel Corporation, Dunkirk, New York. I am speaking today on behalf of the 16 domestic specialty steel companies and their employees, who comprise the Specialty Steel Industry of the United States.

For the record, Mr. Chairman, I would like to submit a paper entitled, "Specialty Steel: A High-Technology Competitive American Industry in Trouble." This paper describes the domestic specialty steel industry and the current problem we are facing with foreign competition.

This hearing is particularly timely so far as specialty steel is concerned, because on December 2, 1981, the Specialty Steel Industry of the United States (also known as the Tool and Stainless Steel Industry Committee) and the United Steelworkers of America, filed the largest and perhaps most controversial section 301 case to date.

We named seven countries in our petition that we know are subsidizing their specialty steel industries. They are Belgium, France, Italy and the United Kingdom -- all of which are members of the European Community (EC) -- and Austria, Brazil and Sweden, which are not EC Members. The European Community signed the GATT Subsidies Code on behalf of all its members. The other three countries signed the Code as individual signatories, as did the United States.

In the original petition, and in two supplements, we provided the Office of the United States Trade Representative (USTR) substantial, detailed information on foreign government subsidies and the impact such subsidization is having on the United States marketplace. It is clear that the use of subsidies by foreign specialty steel industries constitutes a violation of our law and of the subsidy provisions of the GATT. Under section 301, USTR is required to consult with the foreign governments involved, and if no resolution is forthcoming, to take the cases through the GATT dispute settlement procedures.

The specialty steel case represents a broad-based challenge against foreign government subsidies. Because this is a complex and precedent-setting case, Ambassador William Brock asked the domestic specialty steel industry for more time for the U.S. government to prepare for the GATT consultation procedures. We agreed to his request and thus, the submission on January 12, 1982 of our second supplement to the petition was considered for procedural purposes to be a new filing, giving USTR an additional 45 days from that date to accept or reject the petition. Thus, USTR must make a decision by February 26.

We do have a serious concern about the way this case is being handled, however. Our concern goes to the heart of the section 301 process.

In our view, USTR has been focusing only on the GATT side of section 301. As you know, under the statute, the United States Government has the opportunity to proceed to resolve subsidy

questions either under the GATT, or any other trade agreement, or to take unilateral action. It is absolutely clear that the President has broad discretionary authority wholly independent of the GATT to deal with the fundamental problem of foreign government subsidies. We have urged Ambassador Brock to recognize, and use, that authority if the GATT procedures prove to be ineffective. Frankly, given the political and economic conditions in Europe, we are not optimistic that the GATT procedures will deal effectively with the problem of foreign subsidization of specialty steel. By the same token, however, this industry will not stand by idly while our markets are taken from us by the use of unfair trade practices.

In spite of the acknowledged technological superiority of our domestic industry, highly subsidized imports have captured an increasing share of our home markets. Various reports have documented that the American specialty steel industry is the most efficient, the most technologically advanced in the world. Yet no matter how efficient we are, foreign companies can always undercut us on price. Why? Because almost all of them are either owned outright or are heavily subsidized by their governments.

These subsidized imports have contributed directly to plant closings, a sharp rise in unemployment, and significant financial losses by some of the most efficient U.S. companies.

With the exception of stainless steel wire, the products our industry produces were not covered by the trigger price mechanism. The outgoing Carter Administration did institute a surge mechanism on specialty steel imports at the beginning of 1981. However,

despite the good faith efforts of the Department of Commerce, the surge mechanism has not worked. It has not stemmed the flow of subsidized imports and, in fact, these imports are at a far higher level today then they were when the surge mechanism was initiated.

Import penetration of specialty steel products has almost doubled since the first quarter of 1981 and the penetration is certain to go much higher in the months ahead unless our government takes immediate action to enforce our trade laws and the GATT agreement.

In the fourth quarter of 1981, the most recent period for which we have statistics, import penetration of alloy tool steel was 43.7 percent, stainless steel bar 27.0 percent, stainless steel rod 55.5 percent, stainless steel sheet and strip 14.6 percent and stainless steel plate 9.9 percent. In short, imports are not only flooding our markets at a time when domestic demand is down, they are well on the way to taking over our markets and driving more of our producers out of the specialty steel business entirely.

There is evidence that importers are charging well below the U.S market prices for most specialty steel products. In fact, confidential sources reveal to us that foreign products are selling for as much as 54 percent below the U.S. price for certain specialty steel products. It is quite obvious they could not do this unless the foreign steelmakers were helped by the massive subsidization of their steel facilities.

If the United States wishes to maintain a specialty steel industry, we must take aggressive action now. As you know, the specialty steel industry is an absolutely vital industry in this country. Without the products we make, you could not drill for oil or transport natural gas; you could not produce jet engines or navigational instruments for either our airplanes or ships; the chemical and food processing industries could not operate, and we would have to import all of our surgical instruments. Virtually every other major producing industry depends in one way or another on the high-alloy, heat-resistant products we in the specialty steel industry produce.

We have confidence that as enacted by the Congress, section 301 can provide an effective procedure to deal with the most serious problem facing our industry. It remains to be seen whether it will work. We sincerely appreciate your scheduling this hearing, Senator Danforth, and urge you and the other members of the Subcommittee to carefully review the progress of our section 301 petition. We will make every effort to cooperate with USTR to assure that section 301 will work as intended by Congress in this critical case. Thank you.

SPECIALTY STEEL:

A HIGH-TECHNOLOGY,

COMPETITIVE AMERICAN INDUSTRY

IN TROUBLE

Summary

The domestic specialty steel industry has been found to be a highly competitive American industry which is essential to the national defense. Yet, because of increasing competition from foreign producers who are subsidized and who use unfair trade practices in the American marketplace, the industry faces a critical challenge to its future. Imported specialty steel is taking a rapidly growing share of the domestic market, worker layoffs are increasing weekly, and the U.S. government's "surge mechanism" has proved ineffective to deal with foreign unfair trade practices. Therefore, the industry has undertaken an aggressive program to deal with the problem of foreign unfair trade practices. The first action to be taken is the filing of a "section 301" case with the Office of the United States Trade Representative. This case describes the vast system of government subsidies to foreign specialty steel producers. These subsidies violate international and U.S. laws, and the specialty steel industry has asked our government to take appropriate actions to eliminate unfair trade practices and require foreign producers to compete fairly in the U.S. marketplace.

Specialty Steel:

A High-Technology, Competitive American Industry in Trouble

I. Introduction

The United States' specialty steel industry is recognized as a highly competitive American industry essential to the national economy and defense. Yet, because of increasing competition from government-owned or subsidized foreign producers in the American marketplace, the industry faces a critical challenge. Imported specialty steel, using unfair trade practices, is taking a rapidly growing share of the domestic market. This is causing severe injury to American producers, increasing worker layoffs, and threatening the future of this industry.

The U.S. government's specialty steel "surge mechanism" has proved ineffective in dealing with foreign illegal and unfair trade practices. The Specialty Steel Industry of the United States and the United Steelworkers of America, AFL-CIO/CLC are therefore mounting an aggressive program under U.S. trade laws. The first step is the filing -- on December 2, 1981 -- of a "section 301 case" with the Office of the United States Trade Representative (USTR). This landmark action highlights the vast system of government subsidies to foreign specialty steel producers, which violate U.S. and international laws. The specialty steel industry and the union have asked our government to take appropriate actions to require foreign producers to compete fairly in the U.S. marketplace. Additional actions against certain countries and foreign specialty steel producers covering specific product lines will be taken. The industry contemplates that supplementary "antidumping" and "countervailing" duty suits will be filed as soon as current investigations have been completed.

II. The Specialty Steel Industry.

America's highly industrialized economy has become critically dependent upon specialty steels.

"Specialty steels" generally are identified as stainless steels; tool and die steels; high-temperature alloys (super-alloys); electrical, magnetic, refractory, electronic, and

reactive metals. They are designed and produced for applications in extreme environments demanding special hardness; toughness; resistance to heat, corrosion, or abrasion; or combinations of these characteristics. Because of their high-alloy contents, technological properties, and/or the special processing techniques needed to meet close specifications, specialty steels are more difficult to make and call for greater labor input than other steels.

The national requirements for specialty steels may be classified into two groups: activities which are necessary to maintain the civilian economy and a strong industrial base; and those defense needs which bear directly upon military preparedness. Many uses of specialty steels in these two areas are interrelated, and often manufactured products containing specialty steels can be used for both civilian and military purposes. Specialty steels are vital to the needs of our civilian economy and our defense operations -- which, in turn, are dependent upon the ability of this nation to maintain a strong, viable industrial base.

There are many critical applications for specialty steels for which there is no economic, or readily available, substitute material. To keep the highly mechanized and broadly diversified economy of this country running smoothly, specialty steels are an indispensable, basic material.

III. A Highly Competitive American Industry

The United States' specialty steel industry is the world's most efficient producer of specialty steels. U.S. specialty steel companies have invested heavily in new facilities and advanced technology -- resulting in greatly increased productivity. America's specialty steel producers are the world's leaders in technology, advanced equipment, and alloy developments.

The Office of Technology Assessment of the United States Congress completed an extensive study of the steel industry in 1980. The OTA concluded that, with major investments having been made in advanced technologies such as continuous casting and the "AOD" refining process, the domestic specialty steel industry is highly competitive.

IV. An Industry Essential to National Defense

The Senate Armed Services Committee has determined that the specialty steel industry is essential to the national defense. Following hearings which included witnesses from the Department of Defense, the Committee determined that the

products produced by the specialty steel industry are absolutely necessary to support our military capabilities.

Some examples of industries producing essential goods and services for the national defense which are dependent upon specialty steels are the following: the electrical power system, the aircraft industry, semiconductors, food processing, transportation systems, marine equipment, petroleum processing, and chemical processing. Tool and high-speed steels are "the tools which make everything else" in our industrialized economy.

V. The Import Problem

Subsidized and dumped imports of foreign specialty steel present a critical challenge to the future of the domestic industry.

Specialty steel imports are not covered by the Trigger Price Mechanism (TPM), with the exception of stainless wire. However, in 1980, the Carter Administration announced a "surge mechanism" for specialty steels because of concern about such imports. Administered by the Department of Commerce, this program is designed to alert the government of "surges" in specialty steel imports. These surges may indicate unfair trade practices resulting from foreign dumping or government subsidies. If the Commerce Department finds evidence of dumping or subsidization, appropriate legal actions can be taken against foreign producers.

Despite the good-faith efforts of the Department of Commerce, the surge mechanism has not proved effective to deal with the import problem. Imported specialty steel is taking a growing share of the domestic market. For example, current data (3rd quarter 1981) indicates that imports -- as a percentage of domestic consumption -- are at the following extremely high levels for the key specialty steel product areas shown below:

PRODUCT	IMPORT PENETRATION
Alloy tool and high-speed steels	39.5%
Stainless steel:	
Rod	47.0%
Bar	26.6%
Plate	7.5%
Sheet and strip	11.2%
Pipe and tubing	58.9%

Unemployment is increasing weekly. The present rate of unemployment in the domestic specialty steel industry is over 21 percent. In addition, Bethlehem Steel, a substantial producer of tool steels, has announced their complete withdrawal from that market and has described imports as a major factor in their decision.

The Specialty Steel Industry of the United States and the United Steelworkers of America will not sit by while our industry is devastated by illegal and unfairly traded imports of specialty steel. Therefore, the industry and the union have undertaken an aggressive program to deal with this problem. The first action is a "section 301" case, filed December 2 with the Office of the United States Trade Representative (USTR). Additional actions are under consideration.

The "section 301" case describes the vast subsidies being provided to foreign specialty steel producers by their governments. These subsidies are illegal under international agreements, such as the Subsidies Code of the General Agreement on Tariffs and Trade, and under the American countervailing duty laws. It is obvious that, no matter how efficient, American companies -- which must be profitable to survive -- cannot long compete against subsidized foreign producers. Prices of foreign specialty steel products sold in the marketplace often do not even cover the costs of producing them. Foreign producers can afford to sell at such prices only because their losses are made up by government grants, loans, tax rebates, and other similar subsidies.

The industry and the union are hopeful that our government will take appropriate actions to require foreign producers to compete in the domestic market under fair, competitive conditions.

VI. Specialty Steel Producers of the United States

Employing approximately 26,000 production workers, the producing facilities of the specialty steel industry are small in relation to large carbon steel, fully integrated plants. The specialty steel industry, however, employs approximately 65,000 workers directly and indirectly. Annual sales by all specialty steel companies are a fraction of those by the large, carbon steel producers. Some specialty steel producers are one- or two-products companies. The equipment required is highly specialized and must be versatile enough to take care of small production lots of a wide range of grades, custom melted for the specific requirements of each customer.

Though relatively small, the specialty steel companies are well known. They include the following:

Allegheny Ludlum Steel Corporation
AL Tech Specialty Steel Corporation
Braeburn Alloy Steel Division/Continental Copper & Steel Industries
Carpenter Technology Corporation
Columbia Tool Steel Company
Crucible Materials Group, Colt Industries
Eastern Stainless Steel Company
Guterl Special Steel Corporation
Jessop Steel Company
Joslyn Stainless Steels
Latrobe Steel Company
Universal-Cyclops Specialty Steel Division/ Cyclops Corporation
Washington Steel Corporation

Large, carbon steel companies which have specialty steel operations include those shown below:

ARMCO Inc.
Jones & Laughlin Steel Corporation
Republic Steel Corporation

Senator HEINZ. Mr. Chairman, my interest in this matter stems from a broad concern about the overall effectiveness of the 301 process in combating other nations' trade barriers, as well as with how we use the subsidies code to fight subsidies.

Senator Dole and I were deeply involved a few years ago in rewriting section 301 in the 1979 Trade Act. We tried to make it more effective as an instrument in combating subsidies. I do think that it is most timely, in view of other pending legislation that we now review how it has been working.

With respect to other pending legislation, Senator Danforth and I have both introduced bills to better use the 301 process to promote the principle of reciprocal market access. While, I understand the chairman will be holding a hearing on this soon specifically to discuss those bills, it is possible witnesses may choose to make comments on them now.

With respect to the subsidies code itself, a continuing issue of controversy since 1979 has been the extent to which the United States will insist that signatories maintain meaningful commitments to end export subsidies. On the surface this appears to be a relatively simple issue. Nations signing the code ought to act in good faith to reduce, and ultimately eliminate, their subsidies.

In 1979, our Government was quite specific in its determination to insist on a high level of commitment, specifying to private sector advisers that it would not accept code signatures unless the country in question committed to doing four things:

One, not to expand the range of subsidized products for export beyond those covered at the time of accession.

Two, not to raise the level of export subsidy.

Three, not to introduce new export subsidies.

Four, to provide a timetable for phasing out existing export subsidies.

In that regard, Mr. Chairman, on April 27, 1979, Ambassador Alonzo L. McDonald, then Deputy Trade Representative and head of the U.S. MTN delegation, told the Trade Subcommittee of the House Ways and Means that, "For the United States overall, the benefits of the subsidies code include an obligation by foreign governments to eliminate export subsidies completely."

In an article published in "Law and Policy in International Business," in 1979, the two key U.S. negotiators of the subsidies code, Richard Rivers, the former General Counsel of the Trade Representative's Office, and his assistant, John Greenwald, noted that, "Because of the subsidies code, the LDC's will accept discipline over export subsidies in the form of phaseouts of their programs."

Mr. Chairman, if you accept that policy at face value, it did not last very long. In virtually its first test of that policy in early 1980, the Carter administration accepted a manifestly inadequate commitment from Pakistan, probably because of the Soviet invasion of Afghanistan. Subsequently, after protracted debate, we accepted a very similar agreement from India, equally inadequate.

So at this point, after 2 years of experience with the issue, I simply have a very major problem with our so-called commitments policy, which is that virtually every single commitment has fallen short of the standard promised a few years ago.

It is probably unnecessary to say so, but each commitment has been different in substance from the other commitments that we have received. As a result, not only has our policy been confused in our own terms, it provides no guidance to potential signatories trying to formulate their commitments.

Some people might think that it is an abstract issue. In return for signing the code, developing nations and other nations get something that is not at all abstract. They get something very tangible, the injury test. The importance of that concession is demonstrated by the fact that a nation's interest in signing the code rises very sharply just as soon as countervailing duty suit has been filed against it.

Clearly, we do have some very powerful leverage here to make some progress in eliminating subsidies. It is my understanding that it was the policy of the Carter administration to try to eliminate subsidies. As I understand it, it is the policy of the Reagan administration to try to eliminate subsidies. Equally clearly, we have not got a policy that seems to bring that about.

To try to salvage something of the situation, I have introduced S. 1511, the purpose of which is to put our originally articulated policy into statute and to require adherence to it. I frankly do not expect the administration to express support for S. 1511, even though it is totally consistent with what the administration says it is for. I expect that they won't support it because, quite frankly, it is inconsistent with what they have been doing.

I do expect them to explain exactly what our policy is, and how the cases that I have cited, in particular Pakistan and India, but also Australia and New Zealand, get into our policy, if indeed we still have one.

I would also expect them to comment in some detail on their plan with respect to Mexico, a matter of suspicion to this committee in view of the famous toy balloon case of last summer.

Mr. Chairman, I have to admit that this is a complex matter. It is frankly a matter of limited public interest. But I believe it is a very important matter because it really reflects upon our Nation's basic commitment in international negotiations.

We have an opportunity to demonstrate whether or not we are going to once again, as we seem to be doing increasingly, talk tough and then back down. We used to criticize the Carter administration for saying one thing and then not following through, or changing its economic policy every 6 or 8 months. Well, talking tough and then turning out to be a paper tiger is just as bad as changing your policy because in neither instance do you have a policy.

Therefore, Mr. Chairman, this is a problem, I suggest, that really does involve all of us. It is a problem that members of this committee have commented on before, and I salute them for having done so. I am afraid it is going to be one that is going to plague our negotiations with the European Community that Senator Bentsen in particular is very much concerned about, because having opened the door, let the camel's nose under the tent, or whatever metaphor you choose to use here, it is going to be very, very hard to get anywhere in the negotiations with EC, whether it is on agriculture or on specialty steel, if we are being inconsistent in our rhetoric and in our policies elsewhere. Perhaps our witnesses can address themselves to this concern as well.

Mr. Chairman, I thank you.

Senator DANFORTH. Thank you.

Mr. Ambassador, thank you for being with us.

STATEMENT OF HON. WILLIAM E. BROCK, U.S. TRADE REPRESENTATIVE

Ambassador BROCK. Thank you very much, Mr. Chairman.

I will try to go through a summary of my remarks, and submit the balance for the record. I do appreciate the chance to be with you and to address the subject. These issues do have significance, as I think all of you said, in terms of agricultural trade, and in terms of our overall trade policy.

The three themes of the subcommittee's hearings today are intertwined because the majority of the section 301 cases that the administration is pursuing involve the effect on U.S. agricultural interests, in particular on agricultural subsidies granted under the European Community's common agricultural policy.

I should say at the outset that we and previous administrations have said that the common agricutural policy, or CAP as it is commonly known, is a domestic agricultural policy, as you noted, Mr. Chairman, and as such is legitimately the domain of the EC.

If that policy had no manifestations that affected our trade, we would have no cause or no right to publicly criticize it or to discuss it within the context of the General Agreement on Tariff and Trade. Unfortunately, the CAP does affect out trade, and we do

have just cause for criticism and for bringing certain EC practices before the disputes settlement panel of the GATT.

We share many of the same goals that the framers of the common agricultural policy had in mind, but we have gone about reaching those goals in a way that we believe is in conformity with our international obligations. The European Community, on the other hand, has chosen to undertake a costly series of programs whose effect is to shift the burden to other countries, and the burden is becoming untolerable.

The European Community, through high support prices, as the Senator from Texas has noted, induces high-price production. This manifests itself through the need to subsidize exports in order to bring their prices down to the world market level. The EC budget is thus hit in two ways, the production inducement and the export subsidy, and is euphumistically called restitution. A number of products benefit from this restitution system—wheat flour, poultry, pasta, are only a few examples.

As you are aware, we are holding consultations with the EC in an attempt to convince them that the manner in which they are exporting these products is not in conformity with their international obligations. They disagree in several instances. It appears we may find it necessary to take some of these disputes to the formal GATT panel process, something that we have already done in the case of wheat flour.

Given the state of affairs described above, we cannot simply standby while we continue to lose agricultural export markets, and this administration is not standing by. As I noted earlier, we are actively investigating a series a complaints brought under section 301 of the 1974 Trade Act involving EC export and production subsidies on such products as wheat flour, pasta, poultry, sugar, canned fruit, and raisins.

Most of these cases are in the early consultation stages of the dispute settlement process set forth under the subsidies code. The wheat flour case, however, will be heard by a panel during the last week of February.

I think it is too early to make a definitive judgment about the effectiveness of the subsidies code and the dispute settlement process in imposing discipline on the use of subsidies in the agricultural sector.

In any international agreement, there are ambiguities of language which can only be resolved by testing on a case-by-case basis. This is particularly true of article 10 of the subsidies code, which relates to export subsidies on primary products—where the language is perhaps least precise.

As you know, the code does not absolutely forbid the use of export subsidies on primary agricultural products, rather it forbids their use only when they have certain effects. In other words, where the subsidies result in the exporting company having or achieving more than an equitable share of the world export market or in material price undercutting of other suppliers.

Cases we are now investigating constitute the first test of the substantive provisions of the subsidies code. However, with regard to the procedural aspects of the code, I can say even at this stage that we have been extremely dissatisfied with EC reaction to our

complaints because of the delays that have occurred in achieving the dispute settlement process.

I have informed the EC officials of this disagreement on our part. We have made clear to EC officials, I want to assure you, that delays in the international dispute settlement process cannot and will not prevent the U.S. Trade Office from meeting its deadline to make a recommendation to the President under section 301.

This brings me to the question of the effectiveness of section 301 in responding to policies and practices of foreign governments that are either inconsistent with their obligations under trade agreements, or deemed to be unreasonable, unjustifiable, or discriminatory, and a burden on U.S. commerce.

Section 301 is both an authorization to the President to take retaliatory action against a foreign government, and a means by which domestic interests can bring to the Government's attention the fact that foreign practices are adversely affecting our interests.

With respect to the latter, I think we must say that section 301 is proving effective in light of the number of cases which are now being filed. With respect to the effectiveness of section 301 as a tool of retaliation, let me make several points.

First, retaliation is not a preferred result in any 301 case. Rather, our goal is eliminate or modify a foreign practice which is adversely and unfairly affecting U.S. interests. The authority to retaliate conferred by section 301 is intended to provide the necessary leverage to obtain this result. In the numerous past instances, the knowledge that the United States could retaliate under 301 has led to a settlement of the issue.

Where the foreign practice complained of falls into the traditional areas of tariff and nontariff barriers, we are able to devise an appropriate retaliatory action with relative ease. However, as the scope of the issues raised under 301 broadens beyond the traditional product area, we do need to examine the scope of the President's retaliatory authority to determine if it is adequate to meet today's problems.

Specifically, I am referring to foreign practices in the investment and services sectors. Such practices are increasingly viewed as having adverse effect on U.S. economic interests.

While section 302 currently provides the President with specific authority to impose restrictions on the services of a foreign country, questions may be raised as to the scope of his authority and the methods by which it is implemented. Furthermore, section 301 provides no specific authority for the President to retaliate with investment restrictions.

While product retaliation, for example a tariff increase, is admissible under domestic law, in an investment or services case such action might place the United States in violation of its international obligations under the GATT. Therefore, we are currently reviewing the entire scope of retaliatory authority and may come back to Congress to request additional authority.

We are carefully examining the legislation recently introduced to expand the President's retaliatory authority to cover investment.

Our experience with the relationship between the domestic procedures of section 301 investigations and the code dispute settlement process is broadening as we proceed with the investigation of

the agricultural cases I noted earlier. Although these investigations are still in their initial phases, we can already see some areas in which section 301 needs to be amended and/or improved.

For example, we have already experienced difficulty with section 303, a section requires that we request consultations with the foreign government on precisely the same day that we decide to initiate an investigation in the allegations of the 301 petition. The result is that we are required to initiate the dispute settlement process internationally before we have even begun our investigation domestically.

In certain subsidies code cases, a request for consultation must include evidence of the adverse effect the subsidies had on the complaining U.S. industry. Since evidence is frequently developed in the course of the domestic investigation, we may be in a position where we are presenting our case in the international dispute settlement forum even before it has been developed.

While we wish to gain more experience with these cases before we recommend any specific statutory changes, I am confident that we will do so at some near future date.

I have submitted the full testimony.

Perhaps I could make one additional comment unrelated to the topics mentioned but in response to Senator Bentsen's comments during his opening remarks in which he mentioned the criticism, that creates a certain amount of irritation on my part as well as his, of the U.S. farmer as an unreliable supplier. I don't think anything gets under my skin any quicker than that one.

I think it is important to note for the record, and I am sure the Department of Agriculture would agree, that I don't recall a single instance in which our farmers have been responsible for a shutoff of supply. In every instance, it has been our own Government, and it has occurred under several administrations including those of my own party. I would cite the instance of the soybean cutoff because we had an increase in domestic prices early in the 1970's in an action that was terribly shortsighted.

What it did was to tell Japan that the United States is not a good supplier of soybeans. Even though we were far and away the principal supplier at that time, they proceeded in the insuing years of the 1970's to go to Brazil and plant soybeans. We lost markets not for 1 year, but permanently. We just simply cannot continue to undertake that kind of practice on the part of the U.S. Government.

Senator BENTSEN. I would certainly respond by saying, I totally agree on that. I know that the Japanese spent over $1 billion in Brazil to develop soybean production, and now Brazil is our principal competitor on soybeans.

Ambassador BROCK. That is exactly right.

Anyway, it is nice to be with you.

[The written statement of Ambassador Brock follows:]

TESTIMONY OF

AMBASSADOR WILLIAM BROCK

BEFORE

THE SENATE FINANCE COMMITTEE

SUBCOMMITTEE ON INTERNATIONAL TRADE

February 11, 1982

It is a pleasure to be with you this morning to discuss issues that have a significance both in terms of actual trade and in terms of our overall trade policy. The three themes of the Subcommittee's hearings today are intertwined because the majority of the Section 301 cases that the Administration is pursuing today involve the effect on U.S. agricultural interests of agricultural subsidies granted under the European Community's Common Agricultural Policy.

I should say at the outset that we and previous Administrations have said that the Common Agricultural Policy, or CAP as it is commonly known, is a domestic agricultural policy and as such is legitimately the domain of the EC. If that policy had no manifestations that affected our trade, we would have no cause to publicly criticize it or to discuss it within the context of the General Agreement on Tariffs and Trade. But, unfortunately, the CAP <u>does</u> affect our trade, and we do have just cause for criticism and for bringing certain EC practices before the dispute settlement panels of the GATT.

This Subcommittee knows very well the evolution of the European Economic Community from its genesis in the European Coal and

Steel Community, so I won't dwell on all of the background. You are also aware that the United States has long favored European integration and as far back as the Eisenhower Administration the U.S. has actively supported the formation of the EC. The original commitment to economic integration in the EC included the gradual establishment of a customs union -- the freeing of trade between the members and the establishment of a common customs tariff on imports from third countries. For agriculture, this would mean that it would be necessary to bring some uniformity and centralization to the agricultural programs of the member nations.

Thus, when the Treaty of Rome was signed by the original six member states, the groundwork for the CAP was laid. The original objectives set forth for the CAP are certainly worthy: to increase farm productivity, stabilize markets, ensure a fair standard of living for farmers, guarantee regular supplies, and ensure reasonable prices for consumers. While I find myself in general agreement with these objectives, I am very much in opposition to the ways by which the Community has sought to reach these goals.

We share many of the same goals that the framers of the Common Agricultural Policy had in mind, but we have gone about reaching those goals in a way that we believe is in conformity with our international obligations. The Community, on the other hand, has chosen to undertake a costly series of programs and

then shift the burden to other countries. This burden is becoming intolerable.

I don't wish to saddle you with a series of numbers, but it is worthy of note that the cost of the CAP has increased from $7.7 billion in 1976 to $14.4 billion in 1980. These expenditures finance internal programs aimed at improving the structure of agriculture, but they also are designed to act as market supports through intervention purchases, paying for stockpiling, and for export subsidies. If the taxpayers and consumers in the Community wish to contribute to the goals set forth in the CAP, they have every right to do so; after all, they elect the officials who provide the EC Commission with its direction. I begin to balk, though, when the U.S. farmer, processor, or exporter is also expected to shoulder that burden.

As an example, in my trip last December to several European capitals, I was told that U.S. exports of non-grain feed ingredients, such as corn gluten, were responsible for many of the woes of the Community. I was told that the United States should voluntarily restrain its exports of such products because they competed unfairly with EC-produced corn and wheat and that the EC had no hope of bringing its expenditures for price supports under control until this "loophole" was closed. The "loophole", as they called it, is the duty-free binding that the U.S. paid for in earlier rounds of trade negotiations. I pointed this out and mentioned that they actually had the cause and effect reversed. I noted that it was, in fact, the unreasonably high support

prices the EC offered that encouraged high priced domestic production. The domestically produced grains are consequently so costly that the feed compounders seek out corn gluten and other lower-cost grain substitutes in order to formulate their feed rations. I suggested that they should be more properly realigning their domestic grain prices than expecting us to cut back our exports.

Since I have mentioned the fact that the Community, through high support prices, induces high price production, I should also mention that this also manifests itself through the need to subsidize exports in order to bring their price down to the world market level. The EC budget is thus hit two ways -- the production inducement and the export subsidy, which is euphemistically called a "restitution".

A number of products benefit from this restitution system: wheat, wheat flour, poultry and pasta are only a few examples. As you are aware, we are holding consultations with the EC in an attempt to convince them that the manner in which they are exporting these products is not in conformity with their international obligations. They disagree in several instances, and it appears that we may find it necessary to take several of these disputes to the formal GATT panel process, something we have already done in the case of wheat flour.

Again, I don't wish to burden you with statistics, but I think it worthy of note that in at least one instance we have been able to evaluate the cost to the American farmer of the EC

practices. A study undertaken by Michigan State University for wheat showed that in 1981, if the EC had stocked one million tons of wheat and exported seven instead of fourteen million tons, the U.S. farmer would have received an additional fifty cents per bushel for his wheat. For 1982 the estimate is that a bushel would bring thirty-five cents more. The farmers I know would be highly pleased to get thirty-five to fifty cents more a bushel! That's what I mean about bearing the burden of the CAP.

It's not just the export subsidies that bother us, though. The Community has processing subsidies that distort trade; and they also insulate their market from world market price fluctuations through the use of variable levies that come into play when the world market price falls below some calculated minimum import price established by the EC Commission. Further distorting trade is a mechanism that imposes export levies when EC prices fall below the world price. Because the Community is so generous with its support prices, this doesn't happen often; but when it did -- in the early 1970's when grain prices around the world were rising at a rapid rate -- it contributed to the run up in prices and added to the instability of the world market.

Thus, while the EC has sought to stabilize its internal markets, it appears to be forcing instability on the markets of others. It is for that reason that I think we have an obligation to speak out against the external manifestations of what would otherwise be an internal EC matter.

We're deeply troubled by some of the EC practices that I have mentioned and by the fact that although the fourth CAP reform proposal in the last six years is now under review in Brussels, it appears that no meaningful reform is in the cards. There are some who believe that the stronger dollar has removed some of the pressure for CAP reform by making U.S. exports more expensive and consequently reducing the EC's outlay for export subsidies necessary to match our prices. I'm not certain that this is the case, but it is true that the Community has been able to reduce its payments for restitutions. Whether the freeing up of these funds for other uses has had any effect on the push for CAP reform is not clear. It does appear, though, that this latest attempt at rationalizing the CAP is doomed to failure.

Given the state of affairs described above, we cannot simply stand by while we continue to lose agricultural export markets. And this Administration is not standing by -- as I noted earlier we are actively investigating a series of complaints brought under Section 301 of the 1974 Trade Act involving EC export and production subsidies in such products as wheat flour, pasta, poultry, sugar and canned fruit and raisins. Most of these cases are in the early consultation stages of the dispute settlement process set forth in the Subsidies Code; the wheat flour case, however, will be heard by a panel during the last week of February.

It is too early to make any definitive judgments about the effectiveness of the Subsidies Code and the dispute settlement

process in imposing discipline on the use of subsidies in the agricultural sector. In any international agreement there are ambiguities of language which can only be resolved by testing on a case-by-case basis. This is particularly true of Article 10 of the Subsidies Code relating to export subsidies on primary products where the language is perhaps least precise. As you know the code does not absolutely forbid the use of export subsidies on primary agricultural products. Rather, it forbids their use only when they have certain effects. e.g. where the subsidies result in the exporting country having more than an equitable share of the world export market or in material price undercutting of other suppliers. The cases we are now investigating constitute the first test of the substantive provisions of the Subsidies Code.

However, with regard to procedural aspects of the Code I can say even at this stage that we have been strongly dissatisfied with EC reaction to our complaints. In every case, the EC has used delaying tactics which interfere with the smooth operation of the dispute settlement process.

Let me give a few examples. In the pasta case, the U.S. requested consultations on December 1, 1981. The time period for consultations in this case is 30 days. Thus, the consultations should have been completed by January 1, 1982. However, the EC did not even respond to our formal request for consultations until January 25, 1982 -- almost 8 weeks after our request.

Furthermore, they declined to hold consultations. We have replied insisting that they adhere to Code procedures.

Similarly, in the sugar case, the U.S. requested consultations on October 9, 1981. The EC, claiming that their practice did not constitute a subsidy, refused to consult until the U.S. supplied further information. We did furnish additional information on December 10, but the EC did not agree to consult until January 25, 1982. Those consultations are now scheduled for next week, more than two months after they should have been completed.

It was precisely because of the flagrant use of such delaying tactics in the GATT dispute settlement process that Congress, in the 1974 Trade Act directed U.S. negotiators in the Tokyo Round to seek specific time limits on the dispute settlement process. I have informed EC officials in the high-level consultations held earlier this week that we cannot tolerate the continued flouting of the dispute settlement process of the Code. Furthermore, I made it clear to the EC officials, and wish to assure you, that delays in the international dispute settlement process cannot, and will not, prevent USTR from meeting its deadline to make a recommendation to the President under Section 301.

This brings me to the question of the effectiveness of Section 301 in responding to policies and practices of foreign governments that are either inconsistent with their obligations under trade agreements or deemed to be unreasonable, unjustifiable or discriminatory and a burden on U.S. commerce. Section 301 is both an authorization to the President to take retaliatory

action against a foreign government and a means by which domestic interests can bring to the government's attention the fact that foreign practices are adversely affecting our interests. With respect to the latter I think we must say that 301 is proving effective in light of the number of cases which are now being filed. Since August of 1981, we have received six 301 petitions. Thus, approximately 20% of all petitions ever filed under Section 301 since 1975 have been filed in the last five months. Of the six recent petitions, five have been accepted for investigation. The sixth, involving production subsidies on specialty steel, is being reviewed and a decision on whether to initiate an investigation will be made by February 26.

With respect to the effectiveness of 301 as a tool of retaliation, let me make several points. First, retaliation is not a preferred result in any 301 case. Rather our goal is to eliminate or modify a foreign practice which is adversely affecting U.S. interests. The authority to retaliate conferred by section 301 is intended to provide the necessary leverage to obtain this result. In numerous past instances, the knowledge that the U.S. could retaliate under 301 has led to a settlement of the issue. Where the foreign practice complained of falls into the traditional areas of tariffs and non-tariff barriers, we are able to devise an appropriate retaliatory action with relative ease. However, as the scope of the issues raised under 301 broadens

beyond the traditional product area, we need to examine the scope of the President's retaliatory authority to determine if it is adequate to meet today's problems.

Specifically, I am referring to foreign practices in the investment and services sectors. Such practices are increasingly viewed as having adverse effects on U.S. economic interests. While section 301 currently provides the President with specific authority to impose restrictions on services of a foreign country, questions may be raised as to scope of his authority and the methods by which it may be implemented. Furthermore, Section 301 provides no specific authority for the President to retaliate with investment restrictions.

While a product retaliation, for example, a tariff increase, is permissible under domestic law, in an investment or services case, such action might place the U.S. in violation of its international obligations under the GATT. Therefore, we are currently reviewing the entire scope of retaliatory authority and may come back to Congress to request additional authority. We are examining the legislation introduced recently to expand the President's retaliatory authority to cover investment. This proposed legislation may provide significant new and useful authority, and we will review it carefully.

Our experience with the relationship between the domestic procedures of section 301 investigations and the Code dispute settlement process is broadening as we proceed with the investigation of the agricultural cases noted earlier. Although these

investigations are still in their initial phases, we can already see some areas in which section 301 needs to be amended.

For example, we have already experienced difficulty with Section 303. That section requires that we request consultations with a foreign government on the same day that we decide to initiate an investigation into the allegations of a 301 petition. The result is that we are required to initiate the dispute settlement process internationally before we've even begun our investigation domestically. In certain Subsidies Code cases, a request for consultations must include evidence of the adverse effect of the subsidy on the complaining U.S. industry. Since evidence is frequently developed in the course of the domestic investigation, we may be in a position where we are presenting our case in the international dispute settlement forum before it has been fully developed.

In addition, Section 304 differentiates between investigations relating to export and domestic subsidies with regard to the deadline for completion of the investigations. (Section 304 allows 7 months for subsidy cases, and 8 months for domestic subsidy cases.) These time periods were deliberately selected to coincide with the timing of the Code dispute settlement process. However, the Code does not differentiate on the basis of the type of subsidy involved, but rather on the basis of the Code Articles which are alleged to be breached. Thus an additional month is provided for consultations where Article 8 is alleged to be violated. Since it is possible that an export subsidy may be in violation of Article 8, the domestic time limits in a 301 investigation do not necessarily match those of the Code dispute settlement process.

While we wish to gain more experience with these cases before recommending any statutory changes, it is likely that we will do so at some future date.

Senator DANFORTH. Mr. Ambassador, thank you very much.

Earlier this week you had several days of meetings with European leaders. I take it from your testimony that one of the things you discussed with them was your concern about delays in the dispute settlement process; is that right?

Ambassador BROCK. We have expressed that concern on several occasions.

Senator DANFORTH. Did they give you any information, did any news come from them during your discussions as to any moderation in their subsidies program?

Ambassador BROCK. Let me address two subjects in the context of the question.

First, insofar as the delays are concerned, I don't think that that problem is behind us. The Commissioners with whom I visited, both in Brussels and in Key Biscayne, and again in Washington, in the three meetings we have had in the last 3 months, have been advised of our concern.

I think one of the positive things that came out of the meetings this particular week was an understanding on their part that the filing of these cases before the GATT was not a confrontational effort on our part, it was simply the use of the legitimate dispute settlement process that is available to any nation as a matter of absolute right. If we are wrong in our case, then we will be found to be wrong, and perhaps we will have to do something else. But if they are wrong, we will find that out, too.

It was a sincere effort on our part to resolve the matter in a legitimate, legal, prescribed fashion, and the delays simply were not part of the process. I fully expect that they will be willing to participate in these consultations.

Whether we can resolve these claims in the first stage or not, I doubt because the conflict is based on an honest disagreement, at least on our part, on what the words mean in the code. But we will pursue it.

Insofar as the larger question you asked, I think that it is going to be difficult to resolve this matter, and I am not sure that it can be resolved outside of the GATT because they have a totally different view of what their obligations are, and what the agreement constitutes.

I do think they understand now that we are not attacking their right to have their own domestic policy. The CAP is fundamental to the commission, to the community, to the entity of Europe and we do not intend to do anything that would create a division in that organization.

We are very supportive and believe that it should be strengthened, and if in any way we can do that, we will do so. But we honestly disagree, as the Senator from Texas has noted, with the effect of the policy, and we think we have a legitimate right to do so.

Senator DANFORTH. In other words, they did not give you any reason to believe that there would be a change in their policy absent running the GATT procedure.

Ambassador BROCK. Senator, in fairness to Commissioner Dahlsagger, as well as Vice President Haverkamp, and others with whom we have talked, they stated time and again that they had

made a public commitment to move their subsidies or their support program more in line with United States and world market prices.

If they do that, the problem will be resolved. The frustration we have had is that it doesn't seem to be doing that. There is some reduction in a couple of areas below the rate of inflation this year, but in other areas there are increases in the target levels, the price levels, and the quantity levels. It is hard for us to see how that will lead to a resolution of the problem without real conflict between us.

Senator DANFORTH. Mr. Ambassador, we have an overall surplus in trade with Europe. Some have raised the concern that if we were to pursue 301 remedies to their conclusion, this could rebound to our detriment. On the other hand, once we initiate the process, and once we begin raising the question of subsidies, and we feel that they are illegal and they are certainly harmful to our farmers, it is a little bit difficult, I think, once we get into the issue to start backing off.

I want to know if the administration intends to pull its punches either with respect to initiating cases in the future, or pursuing remedies which are available, and which may be necessary to invoke at some future time.

Ambassador BROCK. Senator, we don't intend to pull our punches. We feel very strongly about this matter. We considered the questions you have asked very carefully last year before we began the acceptance of this series of cases. I think we came to a conclusion that goes to the point made by the Senator from Pennsylvania, and that is, we simply cannot have consistent and logical and worthwhile international agreements unless we stick to them, and unless we ask others to do likewise. We have no way in which we can build a better trading world unless we do it within a code of conduct that is adhered to, and that is equitable and worthwhile.

There are honest differences on what the subsidies code means, and it is in certain areas ambiguous, particularly in the agricultural area. There is one way to find out and that is to test it before the GATT in the legitimate consultation, conciliation, and even in the panel process. If our interpretation is wrong, then we are going to try to change the code.

We have told the EC and our trading partners several times in recent months, that it will be a fundamental objective of the U.S. Government, as we go into the GATT ministerial this November, to seek to move this agricultural regime more in consonance with the industrial regime because the industrial regime is much clearer in its prohibition against the use of some of these practices.

We are beginning to build up a pretty good support base around the world because it is not just the United States that is disadvantaged. Greater damage is done to small countries that may have only one crop, because they have no where else to go. When they lose a market, it is gone, and a lot of farmers are out of luck.

You just cannot allow the world trading system to crunch down into a state of barter, which is what would happen unless we continue to make progress in the area. So we are going to pursue the cases because we have to.

We are also going to do the second step, and that is to insist actively, and try to line up as much political support as we can, for

an improvement in the code in the regime which deals with this particular problem area.

Senator DANFORTH. Thank you, Mr. Ambassador.

Senator Bentsen.

Senator BENTSEN. Thank you, Mr. Chairman.

Is there any specific agreement that would hold harmless the CAP, even if the Europeans are adversely affecting our foreign trade?

Let me speak specifically to article 10 of the subsidies code, would that in any way be considered as grandfathering the CAP?

Ambassador BROCK. The problem with article 10 is not that it grandfathers in the CAP per se. The problem with article 10 is that it does not prohibit, as the industrial code does, subsidies per se. It simply says that if you have subsidies, they should not be to obtain more than an equitable share of the world market, and it is in that area that you have great difficulty. Let me give you an example.

I think that it was in the poultry area, if I recall in the Middle East, where the EC was a very small supplier, and we were by far the larger supplier a decade ago. The roles have absolutely reversed in the last 10 years. There are an awful lot of examples like that where we honestly believe the equitable share has been modified substantially by the practice. Yet, it is a matter that is very ambiguous in language, and very difficult in enforcement.

Senator BENTSEN. You have the dramatic reversal of the roles in the Middle East in supplying grain products there, for example, which is another one.

Ambassador BROCK. Yes, you can take almost any product you want to. Europe was a net importer of sugar, and today it is the largest exporter of sugar.

Senator BENTSEN. Again, when you refer to the $14.4 billion in subsidies that result from CAP, actually you have the members states over there that are spending another $30 billion, so you have $44 billion that they are spending in subsidies, and that is compared to the United States' approximately $3 billion being paid to the American farmers.

Ambassador BROCK. We are not even spending that much on subsidies. Our total farm program would cost that much.

Senator BENTSEN. That is right.

Ambassador BROCK. Our direct subsidies would be less than that.

Senator BENTSEN. That is right anywhere you want to draw the line.

Ambassador BROCK. It is certainly better than 10 to 1 any way you count it.

Senator BENTSEN. That is right.

Now without revealing any of the confidential cables and information, I get the impression, that you have got a situation where the EC is talking about curtailing the importation of our agricultural products where we have bindings, and at the same time talking about our increasing our imports. I have the feeling that they are not even talking subsidies, or don't want to talk subsidies.

Ambassador BROCK. I think that that is a fair statement.

Senator BENTSEN. Let's get to another one, then, on these 301 cases. Do you have the adequate staff and assistance that you need, and assistance from other agencies, to be able to bring as many

cases as you want to the GATT? If you don't, what does it take, as we would like to know when it gets to the point of reviewing your authorization later this spring before this committee.

Ambassador BROCK. I think, Senator, that all of us in this particular time of budgetary constraints have had to do with less than what we would consider absolute optimum, but we are capable of doing the job which the Congress has assigned to us because we have had really magnificent support from Jack Block, the Secretary of Agriculture, in this particular area, and other agencies as well in personnel in just basic support, information gathering and all the rest.

Yes, I think we can do our job. As a matter of fact, the larger question is whether or not the GATT can absorb as much as we are throwing at them. If we add too much more, we may have a greater capacity to present cases than they have to resolve them. I think at the present time we are very tight, but we achieve the goals that you have assigned to us.

Senator BENTSEN. Back to article 10, that speaks in terms of underpricing U.S. goods. Pricing is normally a private affair with sealed bids offered against tenders. Do you have the adequate tools to get the information you need to prove a price undercutting case under article 10?

Ambassador BROCK. That is harder to answer. It is very difficult to pin down prices in some of these cases, and we almost have to use U.S. bids for our base data. I am not sure what additional tools would in fact be effective. It is just an area in which not enough information is in fact available.

Perhaps you might ask that question of the Department of Agriculture, who may have more access than I personally or our staff would have. It is a fair question, and it is very difficult to answer. We have wrestled with it.

Senator BENTSEN. You have talked about the number of 301 cases that have been initiated, but I feel there are times that your office should be self-initiating these cases. I think there are cases where the private sector is afraid to initiate a 301 case, they are afraid of some retaliation.

Do you plan to initiate any 301 cases?

Ambassador BROCK. We have done so in some areas, Senator, and frankly have I no objection at all to doing that. I think it is easier in the market system because those companies are out there facing the competition and they see before the U.S. Government would in most instances.

Where there is that circumstance, we would have no reluctance at all to self-initiate and, in fact, have done so in several instances so far.

Senator BENTSEN. Would you provide me with a list of those, please?

Ambassador BROCK. Yes, we will be delighted to.

Senator BENTSEN. Thank you, Mr. Chairman.

Senator DANFORTH. Senator Heinz.

Senator HEINZ. Mr. Chairman, thank you very much.

Mr. Ambassador, a few days ago both you and I were privileged to be down at USICA's National Press Center answering questions from journalists, you in the morning and I in the afternoon.

In the morning, you were asked a question as follows regarding the steel cases. The question was: Did the due process follow-through with regard to steel, and if there is a positive finding, would the U.S. actions, which have to be either duties or negotiated settlement, start a trade war? Your answer was: If so, other steps would have to be found.

Now my question is: If we are following through with due process and it results in countervailing duties, which under our law would have to be imposed, why would our Special Trade Representative, who is our most important negotiator, signify, as I take this remark to—and correct me if I am wrong—that if the European shout and scream loud enough at our imposition of duties, which is fully consistent with the antidumping code and the subsidies code, that we would not do it.

Is that an unfair characterization of your remarks? If it is not, doesn't this send a signal once again that we talk tough, and then we are going to back off just as soon as we insist on enforcing our rights?

Ambassador BROCK. No, it is not an unfair interpretation if that were the only question asked and that were the context of the question, but that is not the case. If it were, then your conclusion would be warranted.

I had had several questions on the whole steel issue—what the process was, what the possible outcome might be, the whole range of possibilities—and then a number of questions on a trade war per se.

What I was trying to say in this question was that I did not believe, and I said this publicly, that U.S. companies were engaging in harassment. They were exercising their fully legitimate rights as American citizens under both domestic and international law.

Second, that we had a legitimate, equitable process available to the Europeans, and that they had no reason to be concerned about equity. We go through a normal process where the Commerce Department has to make its determination, then the ITC makes a preliminary finding, then we get the full testing of the merit of the case from both sides.

Senator HEINZ. I understand.

Ambassador BROCK. All right, but just let me complete the point.

What I was addressing was the possibility of an extreme circumstance of what would be an inequitable circumstance and an inequitable response in which all cases were found to constitute damage and the response was damaging in such a fashion as to be perceived clearly as being a political rather than an equity decision. Under those circumstances, if that were to lead to a trade war, we would have to question whether or not the process had in fact achieved equity.

I was arguing fundamentally that this was not a possibility, that the U.S. process was fully fair to all parties, that both parties would have full equity in the process, that they have full chance to present their testimony, and that there was no such prospect.

Senator HEINZ. Mr. Ambassador, I am glad to hear the latter part that you said.

I don't want to belabor the first part too much longer, but it seems to me that if you did, in fact, say that the application of our

countervailing duty laws and our antidumping laws could result in something that is unfair, that you are talking about something that the committee might want to get into in more depth, because the committee only recently helped enact those laws and they are conceived by most people as being rather fair. But I would rather not get into the subject right now.

Ambassador BROCK. What I was trying to say, however inarticulately, and I can be confusing on occasion, was that I think I said that that was not a possibility. The Europeans had raised the equity argument, and that was not a legitimate position for them to take.

Senator HEINZ. That is a good place on which to end this particular discussion.

I want to get back to our commitments policy, but I guess I am going to have to wait.

Senator DANFORTH. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Ambassador, I have to go to another hearing right now, so I have questions but I cannot ask them right now. The point I want to make to you is that I share a lot of the same frustrations that I think Senator Heinz does and I think Senator Danforth does too from the points he made, and that is, we have had a lot of talk, we file 301 cases, and not much of anything really happens.

What concerns me is that I think there is a significant difference between our form of economy, basically relying upon free competition, on the one hand, and the European Community and, say, Japan, on the other. It is not 100 percent different, but there are certain major differences.

It ties in with some thoughts a couple of year ago on the part of Senator Ribicoff and others that we have a Department of Trade, something to give more impetus and more strength to our efforts to encourage other countries to trade more fairly.

What I am going to ask you is, how in the world are we going to get Europeans to reduce their export subsidies, and Japan to lower some of its nontariff trade barriers even more than it already has, particularly with respect to agriculture?

What is the hang up here, is it the lack of staff, the lack of staying power, or is it a lack of commitment? Is it that there are too many other interests to our country that are pushing the administration not to be tough on the Europeans? What is happening?

Ambassador BROCK. I don't think that it is any of the above.

Senator BAUCUS. What is it, then?

Ambassador BROCK. There is a lot of frustration expressed in this country on almost a daily basis with the time that it takes to get something done in our judicial system. We are not in an entirely dissimilar situation with regard to the EC in our filing of suits against their practices on a 301 basis on agriculture.

We have signed international agreements. We are in legitimate dispute settlement mechanism. We are now testing whether or not it works. It is a new system, and this is the first time it has really been tested. The United States is the one that is taking the lead.

I think it is important for us to find out if, in fact, it does work. If it doesn't, we have made a public commitment to seek modifica-

tion and to do it early in the GATT ministerial meeting in November of this year.

I don't believe that going outside of the process is the way to make the process work. We are trying very hard to strengthen the GATT.

Senator BAUCUS. I agree one has to stay with the process, but I also think there are larger political questions.

Ambassador BROCK. I accept that.

Senator BAUCUS. I think one reason the Japanese lowered some of their nontariff trade barriers, in part, is because of the Resolution that Senator Danforth introduced, and that got their attention at the very least, and it raised the consciousness in Japan of the U.S. concern about United States-Japanese trade relationships.

Ambassador BROCK. I don't challenge that at all.

Senator BAUCUS. I am suggesting that perhaps we have to do something similar with respect to the Europeans. I am sure I will respect the process, I am very much a process person, but I also understand that there are often larger political currents and attitudes which determine whether the process works.

The Europeans are not going to reduce their export subsidies unless they have to. Nobody does anything altruistically, so we have to do something to show them that they have to do it.

Ambassador BROCK. Having gone through the same problem ourselves, I can understand the point you make and frankly agree with it.

But I do think it is fair to state that the European Commission, and I am absolutely convinced of this point, if they are found in the wrong, address the problem. It may be that we have an honest disagreement as to what the code says. If they are found in the wrong, I think they will make the change.

If, in fact, the code does not provide us with the protection that we think is warranted and that we now have under the industrial code, there is a legitimate question in this area as to whether or not the agricultural code is adequate, whether or not it is too ambiguous to be enforceable. If that is the case, then we have to change the code. We are already publicly committed to a major political effort to undertake that task this year, and we are going to try to do that.

There is a different problem with regard to Japan, Senator, and you are thoroughly familiar with it, and that is that most of the Japanese barriers are not in the GATT area. That is why the talk of reciprocity in services and investments is an important conversation for us to be having right now.

Senator BAUCUS. I appreciate that.

As we both know, the proof is in the pudding. One should also know that we are all here ready to help you, but you are in the driver's seat and we are relying upon your advice and guidance.

Ambassador BROCK. In all honesty, you have already been of help, and I appreciate it. We are making some progress.

Senator BAUCUS. That is what we are trying to do, we are trying to help you.

Ambassador BROCK. Thank you.

Senator BAUCUS. Thank you very much.

Ambassador BROCK. Thank you very much.

Senator DANFORTH. Mr. Ambassador, I have just one other point I would like to make. I don't want to ask you a question, but I want to ask you if you would do something for me.

The problem is, as I understand it, that the Europeans are subsidizing, heavily subsidizing, agricultural production, and the result is that they are producing more than can be consumed in their own markets—25 percent more. Their problem is what do they do with this stuff.

Ambassador BROCK. Yes.

Senator DANFORTH. We, at the same time, are producing much more than we can consume in our market, and we want to sell it abroad but they are undercutting our price. That is not fair, and we want to redress that grievance, and that is fine.

Part of the problem stems from the fact that more food is being produced. Really, the problem is created by the fact that more food is being produced in the United States and in Europe than can be consumed domestically.

Ambassador BROCK. Yes.

Senator DANFORTH. At the same time, there are parts of the world where there is desperate starvation.

Ambassador BROCK. Absolutely.

Senator DANFORTH. Not very far from the markets where people are able to buy food, people in Africa right now—some 15 to 17 million people—are starving. It just seems to me that this is a matter which really deserves the attention of our Government and the attention of at least the free world and, hopefully, the whole world.

Maybe some creative thinking could be done between our country and the Europeans on at least getting some of this surplus to people who cannot pay for it, or who can pay very little for it, to help relieve this serious problem.

What I would like to ask you is if you or somebody in your office could undertake some creative thinking, perhaps with our Department of Agriculture, on whether or not the problem we are talking about today can be meshed in with the hunger problem, and if we can't just think about whether there is some kind of a fit that can be put together.

It is certainly not going to be a total answer to the problems we have, because we want to sell products to foreign markets, they want to sell to the foreign markets, and they want something in return for it. So I am not talking about the total answer.

I recognize that we have a problem and we are going to have to solve that, but at the same time we might use this as an opportunity to do some creative thinking between our country and Europe on the whole question of hunger.

Ambassador BROCK. I think that is an enormously valuable suggestion, as usual, from the Senator from Missouri.

One of the fun things about this new series of meetings we have had with the European Commission, starting with the Brussels meeting and going into this one here in Washington this week, was the fact that all the press accounts and all of the disputes have been about the areas of disagreements, steel and agriculture primarily. However, easily half of the conversations that we had were on reaching for more positive ways to deal with some of these problems.

I think they are willing to take whatever steps they can to be helpful. I know that we are interested. I know our Department of Agriculture is. We will take your suggestion and try to pursue it, and see if we can't get rid of the surpluses.

The incredible thing is that half the world under one system can't produce enough to feed itself, and our problem is not poverty or shortage, it is surplus.

I do think, even in that sense, it would help the dialog if we toned it down just a bit because none of us are without sin. If you look at the American agricultural scene, we too have surpluses that are engineered and supported by the U.S. Government. We too have engaged in selling that surplus below market price in the world, and we too are subject to some criticism in that regard.

If we are going to solve the problem, I think we have to start from the premise that all of us have some blemishes. Maybe if we get together and start off with that understanding, maybe we can find our way out of the problem. I hope we will do it in a nonconfrontational and a more rational fashion, reaching for positive alternatives as you have suggested, instead of acting entirely on a negative basis.

Senator DANFORTH. Senator Heinz.

Senator HEINZ. Mr. Chairman, thank you.

First, I would ask unanimous consent to enter into the record testimony by the AFL–CIO on the LDC's subsidies code commitment issue.

Senator DANFORTH. Without objection.

[Statement of the AFL–CIO follows:]

SUBMITTED STATEMENT BY THE
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SENATE FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE
ON S. 1511, TOGETHER WITH THE EFFECTIVENESS OF
SECTION 301 AND THE SUBSIDIES CODE

February 11, 1982

The AFL-CIO welcomes this opportunity to comment on the effectiveness of two major promises of the Multilateral Trade Negotiations and the Trade Agreements Act of 1979. In our view, both Section 301 of the 1974 Trade Act and the Subsidies Code, which were supposedly intended to help correct unfair trade practices, are in need of attention. Both represent longstanding promises to create fair trade. Historically, neither has significantly benefitted the United States or enhanced fair international trade.

This principle of Section 301 has been in the law since 1962. This section authorizes the President to retaliate if unfair and unjustifiable foreign trade practices of foreign nations cannot be removed through negotiations. After 20 years, the evidence is clear that Section 301 has not been implemented effectively. Because we anticipate additional Senate hearings on Section 301 in the near future, the emphasis of this statement will be on the Subsidies Code. Some preliminary comments on Section 301 are appropriate.

The Subcommittee has scheduled this review to emphasize the relationship between the use of Section 301 and the Subsidies Code and the Common Agricultural Policy of the European Communities. As vital as we consider an examination of the effect on U.S. farm exports, we hope that all U.S. products -- both exports and those manufactured for consumption here -- will receive equal consideration.

AFL-CIO membership includes workers affected by agricultural issues. Thousands of workers engaged in processing agricultural products are concerned about the need to export processed foods and fibres and not merely to export raw materials. American farm workers also are affected by agricultural trade -- both by imports and exports. Even factory workers making non-agricultural products can be affected indirectly by EC agricultural subsidies.

The AFL-CIO believes that S. 1511, introduced by Senator Heinz, can make an important contribution to fair trade. It addresses the serious breach of faith that has been the root of the evil in the failure to implement the Subsidies Code. This bill merely seeks to codify past government promises originally made to obtain its open-ended negotiating mandate. Passage of S. 1511 will serve to assure that those promises are finally kept.

The Subsidies Code is a "fair trade" issue. Most nations of the world subsidize their exports. The Subsidies Code adopted in the Multilateral Trade Negotiations sets general international rules for curbing this illegal practice.

As background, for many decades U.S. law required countervailing duties against any imports which had been subsidized. That law was not enforced effectively. Instead of coming to grips with the problem, the U.S. chose to negotiate new international rules in the MTN.

One of the big issues in the Multilateral Trade Negotiations, therefore, was the demand by our trading partners -- principally the European Communities -- for an injury test in this code --

thereby placing an onerous burden of proof on all future petitioners. After much debate, the U.S. caved in and in 1979 changed its law to include an injury test for signatories to the Code.

S. 1511 remedies the absolute avoidance of the implementation of the Code's principles and of the assurances to the Congress in regard to less developed countries. Because the less developed countries were promised "special and differential treatment" in the MTN, the minimum requirements of the Code's application to LDC's were never negotiated. Many of the less developed countries are not even GATT members. The Administration assured the Congress and all of us in the private sector that before any less developed country could become a signatory to the Code it would have to meet the following four obligations:

1) Not to extend existing export subsidies to more products.
2) Not to raise existing subsidies.
3) Not to start new export subsidies, and
4) A commitment to phase out existing subsidies and to eliminate immediately the subsidies on products in which that country is already competitive.

S. 1511 would codify those four minimum obligations and thus insure their observance. Until a country has signed the Code, U.S. law provides that the injury test is not available to that country.

If S. 1511 serves to stiffen the backs of U.S. negotiators to curb unfair trade from LDC's, it is a positive step. Further delay will worsen the U.S. trade position, both in economic terms

at home and in political terms abroad. The basic issue in S. 1511 is: What countries should get the benefit of U.S. obligations under the Codes? What countries should be considered "countries" under the agreement?

The history of the implementation shows how the problems developed. First, Pakistan, a truly poor country, was allowed to sign the Code without these four obligations. Then India demanded the same treatment as Pakistan under the most-favored-nation clause of the GATT. Then an Alice-in-Wonderland arrangement developed that caused the U.S. to be worried that it would be considered a violator of GATT. India signed with less than full compliance with the four parts.

Second, countries like Brazil and Uruguay made commitments under the Code, signed, got rights in the U.S. but then changed their minds about living up to their commitments.

Third, the Reagan Administration granted Mexico an injury test, the basic right in the Code in a dispute about subsidized imports of toy balloons. However, Mexico is neither a signatory to the Code nor a member of the GATT. But Mexico gets most-favored-nation or equal status with all other exporters to the U.S. In addition, in the pending toy balloon case, the U.S. granted Mexico the benefits given any signatory to the Code.

The AFL-CIO does not believe that trade should be a one-way street. The posture of the United States as an inept negotiator, turning industry after industry over to foreign producers who subsidize exports, has a devastating effect on American workers whose jobs are lost as a result. The current state of affairs has nothing to do with free trade or with sensible foreign relations. Instead, each country seeks to be exempted

from any obligations because other countries have been. But the U.S. is held to GATT obligations as if fixed in cement.

Without specifics in U.S. law, a negotiator for the U.S. is hard-pressed to demonstrate the rights of the United States.

The only way to achieve any leverage to stop the proliferation of unfair arrangements is to put the minimum level of obligations into law. The advantage under the Code will still remain with the foreign countries and their exporters, but S. 1511, at least, would be a positive step to strengthen the U.S. negotiators' posture.

Equally important, S. 1511 has provisions to make sure that countries which do not live up to their commitments lose their privileges under the Code.

These are minimum but important steps to assure the United States the decent respect that is due to this nation and to move toward fair trade. For these reasons, the AFL-CIO urges the Subcommittee to act favorably on S. 1511.

Senator HEINZ. Mr. Ambassador, I would like to ask you, after having read in my opening statement the four kinds of commitments that we are supposed to receive from LDC's, and they are listed in S. 1511 as well, are those four kinds of commitments still our Government's policy?

Ambassador BROCK. Yes, they represent a very clear statement of our goals and objectives. We are something less than perfect in achieving the goal, as you have pointed out.

Senator HEINZ. How do Pakistan, India, and New Zealand fit into that policy?

Ambassador BROCK. I am not sure that either of the first two could be considered as having very much fit. The latter I think does fit.

In the New Zealand case, we have a termination date, and the accession or the willingness to provide the injury test is a conditional one predicated upon the final action of the New Zealand Government, which we honestly believe will occur. We can say that is consistent with the goals established in the policy.

Senator HEINZ. Your testimony was silent on S. 1511, but my understanding is that you do have some objections to it. Is that correct?

Ambassador BROCK. Yes. I understand the logic of it, and I am not sure I disagree with what is trying to be achieved.

I think the problem we have with it is that each of these countries is different, and if we unduly constrain our ability to negotiate by statute, it may have the counterproductive thrust of forcing us into a fight in the GATT itself on whether or not a most favored nations principle is an overriding principle, or whether or not the commitments policy is the overriding one.

One of the difficulties we have in sustaining a commitments policy, and we have talked about this before, is that the United States is the only country in the world that has one. I have suggested to some of our trading partners that they should consider a similar policy. It certainly would make life much easier for us, if indeed we really and truly believe what we said. If we are not going to adhere to international agreements, why sign them.

Senator HEINZ. We are talking about people who have not signed the subsidies code.

Ambassador BROCK. Yes, I know. I am talking about the ones that have signed and are not acting as strongly as we are to see that in fact the code is enforced.

I think the United States has a legitimate, coherent policy that has a predictable end product, and that is the elimination of export subsidies. That is an enormously important goal for this country, but it is important to the world system itself.

In the case of the bill that you mentioned, I guess the only concern that I have is that we would feel that it would be difficult, if not impossible, to negotiate under the circumstances, to have any flexibility. That might throw us into a different problem, and it might be counterproductive.

Senator HEINZ. So your concern, as I understand it, is not with the specific kind of commitment that is required in the bill, it is with the lack of administration discretion?

Ambassador BROCK. Yes, that is basically it. What if it forced us to repudiate commitments already negotiated that were in fact good commitments, but might not meet every dot and tittle of the bill. That is the sort of thing that would really trouble us.

Brazil, for example, has signed a very strong commitment that their subsidies will be terminated, and I believe them when they say that. They are committed to it, and they are a country under the agreement. If we were required to repudiate that, I think it would put us in a very difficult position.

Senator HEINZ. Mr. Ambassador, I suppose the one thing that makes some of us nervous is, given the cases of Pakistan and India, which I think you have described very forthrightly as not fitting in with this policy very well, what reassurances can you provide us in the Congress that future commitment for nonsignatories to the subsidies code will measure up to your and our stated policy?

Ambassador BROCK. I don't know what I can say, other than we have made and are making a best effort. I think the record will indicate we have been remarkably successful. There are those two that would have to be stretched considerably to fit the criteria that you have established, but the others I think, all of the others that I can think of, do in fact offer us the hope that we have achieved the goal that you have set, and we will continue to do that in the new ones we are negotiating now.

Senator HEINZ. One of the reasons I ask, Mr. Ambassador, is that ever since the toy balloon case, there has been a lot of suspicion about the intention of giving Mexico the injury test. What are our intentions?

Ambassador BROCK. Our hope is that Mexico will ultimately see fit not only to sign the subsidies code, but to join the GATT. We have expressed that in every forum to them.

Senator HEINZ. But if they don't, is there any possibility that the administration might grant them the injury test?

Ambassador BROCK. I don't know how we could grant an injury test under current law, unless they were in substantial compliance with the goals that have been established both by the code and by U.S. law.

Senator HEINZ. My last question, Mr. Ambassador, is this: Can you tell us what your plans might be for the specialty steel section 301 petition?

Ambassador Brock. The petition, as you know, was resubmitted just within the last couple of weeks. We expect to complete our analysis within the next 2 to 3 weeks, and make a decision on that. I have not had enough time to evaluate the submission to make a final decision yet.

Senator DANFORTH. The time of the gentleman has expired.

Senator HEINZ. This is a very quick question, Mr. Chairman.

Going back to Mexico very briefly, can you assure us that any bilateral agreement would contain the equivalent commitments that you mentioned, and that you would consult with the committee before taking any action?

Ambassador Brock. I don't know how to tell you what any agreement might contain. Obviously, they have their own approach to it, and they would have to negotiate on their own behalf, but I can say that we certainly will consult with the committee during this process.

Senator HEINZ. Thank you, Mr. Chairman.

Senator DANFORTH. Senator Long.

Senator LONG. A long time ago, Pete Peterson, when he was Secretary of Commerce, I believe, and working in the trade area, said that it would answer the world's problems if everybody would be willing to settle for a balance of trade. Basically, if every nation had a balance of its own accounts, it would work out to an overall balance for the whole wide world. To me that is the logical way to solve the world's trade problems.

We can't keep running any $40 billion deficit in merchandise trade. You don't want to sell all our farms, all our real estate, all the American corporations and their factories to the Japanese, do you, basically you would like to see us own some of that for us, rather than have it owned by Saudi Arabia, Japan, or somewhere else, and I do, too.

In my judgment, we ought to be pushing a trade policy that would permit a balance. There are a lot of things Japan could import from the United States, if they wanted to cooperate, but those people don't want to cooperate. I think we ought to adopt a policy that recognizes that they are not cooperating and we have to go elsewhere to find our answers.

For example, if we just would make a deal with Red China to build the machines and show them how to use them, everything they are manufacturing in Japan those Chinese could make, and make them just as cheap or cheaper. Given about 3 years to do it, those people would be willing to trade us even. In other words, we would provide them with something they use, and they would provide us with what the Japanese are now providing us.

We could do the same thing in trading with Mexico. We have pretty close to a balance with Mexico. I don't think that it has ever been a problem to maintain a balance with Mexico, they are willing to cooperate in that area.

Why can't we work on the basis that we are going to have a balance, and that everybody should have a balance. In other words, wouldn't that pretty well solve the world's problem if everybody were willing to cooperate to help his neighbor achieve a balance in his accounts?

Ambassador BROCK. I sure would help, Senator. It is awfully difficult to have a balance with each individual country.

Senator LONG. I am not advocating that.

Ambassador BROCK. Overall, you are absolutely right.

Senator LONG. Here is what Pete Peterson was suggesting. I don't know whether he has changed his mind since he left Government, but it makes all the sense in the world to me, that we all ought to cooperate.

The United States should have a balance of trade, not necessarily with any one country but the overall should be a balance, and everyone would cooperate to achieve that result.

I am told that Japan's total surplus is about $35 billion, and about half of it is with us.

Ambassador BROCK. As projected for this year, that is correct.

Senator LONG. That means their surplus is the other guy's deficit. Nobody wants to pay for his trade by having to sell the family jewels. He doesn't want to have to sell his farms and factories, or give away his country, give away the national parks, and all that. He would like to be in a position that he is trading in products, basically, on the idea of comparative advantage.

Why can't we start going for a trade policy where we help all those less developed countries achieve that, to buy what they need to buy, cooperate as we are trying to cooperate, and buying from them whatever they have got to sell in order to earn their way. Then, as a part of this, adopt a set of programs of just breaking the huge surpluses of those who insist on accumulating them.

For example, I don't know why Japan insists on owning all the American factories, but that is the way they are headed. It seems to me that we could do business on such a basis that the whole world would profit, including our friends over in Japan. Why can't we push for that kind of a policy, and get people to cooperate in getting there?

Ambassador BROCK. I happen to believe that is where we intend to go, and precisely what we are trying to achieve is a balanced approach. If the continuing process that we are pursuing with Japan, and that is the case in point, is successful, and I think it will be, we are going to move a long way toward that goal.

Senator LONG. I have had the Japanese come by many times, including back in the days when I used to be chairman of this committee, I never seemed to get anywhere with them until one day there was a Chinese delegation in town. After the Chinese delegation left I said, I think I have finally come up with the answer in trading with you people.

Until we can work out a balance between our two countries, I think we ought to just arrange to buy everything from China that

we are presently buying from Japan. That will solve the problem, because they are willing to trade with us on an even basis.

Those people said, "You don't want to trade with a Communist country. "My reaction was, I would rather do that than go broke." [General laughter.]

Senator LONG. Thank you very much, Mr. Chairman.

Senator DANFORTH. Thank you.

Mr. Ambassador, we thank you very much.

Ambassador BROCK. Thank you very much, I enjoyed being with you.

Senator DANFORTH. The next witness is Mr. Thomas Hammer, Deputy Under Secretary for International Affairs and Commodities, Foreign Agricultural Service.

STATEMENT OF HON. THOMAS HAMMER, DEPUTY UNDER SECRETARY FOR INTERNATIONAL AFFAIRS AND COMMODITY PROGRAMS, FOREIGN AGRICULTURAL SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. HAMMER. My name is Thomas Hammer, and with me is Rollard E. Anderson, Assistant Administrator for International Trade Policy of the U.S. Department of Agriculture.

Ambassador Brock covered many of the points that I would cover in my testimony, so I would like to submit my complete testimony for the record, and attempt to summarize quickly.

To U.S. agriculture, the subsidies used by the European Community are among the most harmful of all trade policies and practices undertaken by any of our trading partners. Provided through the common agricultural policy, the subsidies interfere with U.S. agricultural trade with other countries, and they have put downward pressure on foreign prices.

The EC has become a major world exporter of agricultural products largely through its use of export subsidies. In grains, for example, the EC last year emerged as a net exporter for the first time in its history. With wheat exports of 14 million tons, double its more historical level of 7 million tons, the EC is now challenging Australia as the third largest wheat exporter.

These subsidized grain exports have reduced export volumes and reduced prices for the United States and other exporters. The USDA's analysis shows, for example, that with the exports at normal levels, U.S. producer prices last year for wheat, and therefore the world price, would have been 50 cents a bushel higher, resulting in an increase in net farm income for the U.S. farmers of $1.7 billion, I might add, at a time when we need that very dramatically.

The story is similar for other commodities. The U.S. sugar industry, for example, estimates that the EC's export subsidies have contributed substantially to the industry's lost revenue. In beef and veal, dairy products, poultry, and other products, the EC has used subsidies to gain world market shares ranging to more than 50 percent.

Mr. Chairman, over the years, the United States has attempted to deal with the EC subsidy problem without much success. The GATT rules on subsidies were vague, with nonclearcut procedures

for lodging a complaint, and no schedule of resolution of disputes which might be brought.

A workable solution was sought in the Tokyo round of the multilateral trade negotiations, but the subsidies code that emerged is little more than an attempt to clarify existing GATT rules. It does not prohibit the use of subsidies on primary agricultural products.

However, article 10 of the code provides that these subsidies shall not be used: (1) to gain more than an equitable share of world export trade in subsidized products, and (2) in a way that materially undercuts the price of other supplies in that same market.

Section 301 petitions protesting these EC subsidies have been filed, and with USDA suport have been accepted for action by the U.S. trade representative, on wheat flour, poultry, canned fruit and raisins, pasta products, and sugar. The USTR is proceeding through the GATT with these complaints.

Much was made at the conclusion of the multilaterial trade negotiations in 1979 that while the subsidies code as it relates to agriculture may have fallen short of its expectations, it provided a foundation on which to build case law to bring the use of subsidies under control. In this view, the use of code in actual dispute will establish a workable definition of primary products, it will tell us what is an equitable share of the market, and will spell out the concept of subsidized prices materially below those of other suppliers. We have begun to test this premise and find out whether these rules are adequate to meet our concerns.

Thank you, Mr. Chairman.

[The statement of Mr. Hammer follows:]

Statement by Thomas Hammer, Deputy Under Secretary
United States Department of Agriculture
before the Senate Committee on Finance,
Subcommittee on International Trade
February 11, 1982

I appreciate the opportunity to participate in this hearing, and I commend the Chairman for focusing on the Subsidies Code of the General Agreement on Tariffs and Trade (GATT).

To U.S. agriculture, the subsidies used by the European Community are among the most harmful of all the trade policies and practices undertaken by any of our trading partners.

There is no question that the EC use of subsidies, provided through the Common Agricultural Policy (CAP) has hurt U.S. agriculture. The subsidies interfere with U.S. agricultural trade with other countries, and they have put downward pressure on farm prices.

In addition, the subsidies exacerbate the cyclical swings in commodity prices by stimulating exports when supplies are large and retarding exports when world markets are short.

The CAP, as most of you know, maintains high domestic support prices for agricultural commodities. These prices are protected by variable import levies designed to raise import prices to the level of EC internal prices. There is no mechanism to limit production, and excess production — stimulated by guaranteed high producer prices — is disposed of largely by means of subsidized exports to international markets.

In our view, the EC has become a major world exporter of agricultural products largely through its use of those export subsidies.

It has moved from a substantial importer to a significant exporter of many major agricultural products, exceeding self-sufficiency in most commodities covered by the CAP.

In grains, for example, the EC last year emerged as a net exporter for the first time in its history. With wheat exports of over 14 million tons — double its more historical level of 7 million tons — the EC is now challenging Australia as the third largest wheat exporter.

In the last five years (1976/77-80/81), EC grain production has increased by about 30 million metric tons, five times more than its consumption increase.

The EC maintains very low carryover stocks, at about the same level as those held by some developing countries, so it is not surprising that subsidized exporting took precedence over stock building in disposing of the production gains. EC grain stocks during this period increased by only about 2 million tons — to 23.4 million.

EC grain export subsidy costs during the period rose from about $540 million to close to $2.2 billion. And by last year, the EC had captured about 15 percent of global export trade in wheat, its principal grain export, almost double its average share in the early 1970's.

These subsidized grain exports have reduced export volume and contributed to reduced prices for the United States and other exporters.

USDA analysts have estimated that the surge in EC wheat exports cost the other major exporters substantial losses in export volume. Without the 7-million ton EC increase, the U.S. would have exported 4.1 million tons more wheat in 1981, Canada 1 million tons more, Australia 200,000 tons, and Argentina 100,000 tons.

The analysis shows that U.S. producer prices for wheat, and therefore the world price, would have been 50 cents a bushel higher, resulting in an increase in net farm income for U.S. farmers of $1.7 billion.

The story is similar for other commodities.

In sugar, EC production since 1976/77 has increased by almost 2 million metric tons while domestic use and stocks have shown little change. However, exports have more than doubled — from 2.1 million tons to 4.5 million tons.

At the same time, the EC share of the free world sugar market grew from about 8 percent to more than 20 percent. Under the impact of subsidized EC export prices and other factors, world raw sugar prices, which were 41 cents a pound in October 1980, tumbled to 11.66 cents a pound last September.

The U.S. sugar industry estimates that EC export subsidies have contributed substantially to the industry's lost revenue.

Without the price-depressing effect of EC sugar export subsidies, there would have been far less need to adopt the type of sugar support program that was passed by the Congress last December.

In beef and veal, the EC, long a net importer, reached self-sufficiency in 1973/74, but production continued to increase without relation to consumption.

Since 1977, total EC domestic consumption of beef and veal has dropped by almost 1,500 tons while production rose by 330,000 tons. As a result of subsidized exports of the excess, the EC has become the second largest exporter of beef in the world, behind only Australia.

The EC also depends entirely on export subsidies for its share of the world market for dairy products, and that has become a formidable share over the last 10 years or so.

In 1980, the EC accounted for three-fifths of world trade in butter, more than 42 percent of the cheese trade, and nearly three-fifths of the trade in nonfat dry milk. This is in sharp contrast to 1969, when the EC share did not approach even one-third for any of those commodities.

EC subsidies, which last month ranged from 33 cents a pound for butter to 18 cents for nonfat dry milk, contribute substantially to the relatively low world prices for dairy products.

U.S. production, with prices supported at levels from 44 cents to about 50 cents higher than low world prices, has little chance to compete in the subsidized world market.

The story is the same in poultry, where the EC has moved from the world's largest importer during the 1960's to become the world's largest exporter, now accounting for 35 percent of the world broiler market.

There has been a direct correlation between the imposition of EC poultry export subsidies and reduction in the U.S. share of important foreign markets -- the non-EC countries of Europe, the Far East, the Caribbean, and most dramatically in the Middle East.

The U.S. accounted for virtually all poultry exports to the Middle East until 1966. EC subsidies since then have virtually eliminated U.S. competition in what has become the fastest growing market in the world.

The U.S. poultry industry contends that subsidized competition of this type has held U.S. exports to only 4 percent of production by the most efficient producers and processors in the world.

The EC policy of stimulating production by guaranteed, protected high prices not only hurts U.S. agricultural exports to third country markets, it affects U.S. exports to the Community itself.

U.S. agricultural exports to the Community have grown, it is true, but the greatest growth has been in products not protected by the variable import levy system.

U.S. exports to the EC of items covered by the levy increased in value by 2.6 times between 1970 and 1979 while exports of non-levy items grew by 4.1 times. As a percent of total agricultural exports by the U.S. to the Community, products subject to the variable levy have declined from 31 percent in 1970 to 22 percent in 1979.

As is evident from this litany of trade disruption and distortion, which by no means exhausts the list of products affected, the use of export subsidies by the EC is not new. It goes back to the 1960's, starting with poultry, and more commodities have been added to the subsidies list, particularly in recent years.

Over the years, the United States has attempted to deal with the problem without much success, including at one point using subsidies of its own to counter EC subsidization in the poultry trade.

The GATT rules on subsidies were vague with no clear-cut procedure for lodging a complaint and no schedule for resolution of disputes that might be brought.

Passage of the Trade Act of 1974 gave the U.S. industry the opportunity in Section 301 to petition the President to seek relief from damaging unfair trade practices, including the use of subsidies.

One of the earliest Section 301 complaints was filed in December 1975 by the Miller's National Federation, charging the EC with unfair use of subsidies on wheat flour, which caused reduced U.S. flour sales and a loss in market share for the U.S. industry.

With the Tokyo Round of Multilateral Trade Negotiations (MTN) under way, the complaint was addressed in the context of the negotiations in the hopes that a workable solution to the problem of agricultural subsidies could be reached.

The result of the MTN, as you know, was less than satisfactory for those seeking a clear definition of do's and don't's in the use of subsidies and a better way to speedy relief from injury.

The Subsidies Code that emerged attempts to clarify existing GATT rules. It does not prohibit the use of subsidies on primary agricultural products. However, Article 10 of the code provides that these subsidies shall not be used (1) to gain more than an equitable share of world export trade in the subsidized products, and (2) in a way that materially undercuts the prices of other suppliers in the same market.

Provisions of the Code made it easier to lodge complaints against unfair subsidies, and after consultations with the flour industry, it was decided to push ahead with their 301 complaint.

Since then, Section 301 petitions protesting EC subsidies have been filed and — with USDA support — have been accepted for action by the U.S. Trade Representative on poultry, canned fruit and raisins; pasta products, and sugar.

We also are actively pursuing a 301 petition filed in 1976 by the U.S. citrus industry in an attempt to settle a long-standing dispute over preferential tariffs accorded by the EC on Mediterranean citrus products.

Section 301 petitions are filed only after close consultations between USDA, USTR and the affected industries. To pursue a complaint under the Subsidies Code, it is not enough to believe, as we believe in the United States, that subsidies are inherently unfair. It is necessary to prove conclusively that the subsidies have produced market results prohibited by the Code.

We in Government must depend on the industry that faces the problem to help provide the evidence that will make the case.

The poultry problem, for example, has been with us for more than 15 years. Although Section 301 was available in 1975, we didn't use it because the MTN was under way, and only after lengthy discussions with the poultry industry and belief that the data to substantiate the claim were there, did the industry decide to file a petition.

Sugar, on the other hand, has emerged as an obvious problem fairly recently, and prospects for a successful action were boosted by a GATT panel ruling in 1980 that EC export subsidies may prejudice the interests of other countries in international markets. The ruling came on complaints filed by Australia and Brazil.

As you know, the GATT panel hearing is among the final steps in the complaint process under the the GATT or Subsidies Code. It is called into play if the first step — bilateral consultations between the sinner and sinned against — fail to settle the issue.

The panel, made up of three to five experts from among the GATT member countries, hears the case and makes a recommendation to the GATT Council.

If the panel finds the complaint is valid, the Council can authorize the complaining country to withdraw trade concessions to compensate for its loss.

We are furthest along in the wheat flour case. Bilateral and GATT Article XXII consultations after the MTN's were concluded failed to resolve the dispute, and on December 14 the U.S. asked the Subsidies Code Committee for a panel to hear the case.

The panel, consisting of representatives from Canada, Japan, and Switzerland, is tentatively scheduled to meet the last week of this month.

Bilateral consultations have been scheduled February 16 on the poultry and sugar complaints and February 23 on the complaint involving canned fruit and raisins. Consultation dates have not been set for citrus or pasta.

Much was made at the conclusion of the Multilateral Trade Negotiations in 1979 that while the Subsidies Code as it related to agriculture may have fallen short of expectations, it provided the foundation on which to build case law to bring the use of subsidies under control.

In this view, the use of the Code in actual disputes will establish a workable definition of primary products, it will tell us what is an "equitable" share of a market, and spell out the concept of a subsidized price "materially" below those of other suppliers.

We have begun to test that premise.

That concludes my statement, Mr. Chairman, I will try to answer any questions the committee members have.

Senator DANFORTH. Mr. Hammer, I guess there are two possibilities with respect to pursuing our remedies under GATT. One is that we win the case, and the other is that we lose.

Let's suppose either event. In section 1203 of the farm bill which was passed this year, we provided for a special standby export subsidy program for agricultural commodities. Therefore, one possibility would be, if the Europeans are going to subsidize their agricultural exports, two can play that game. We would be willing to compete on subsidies and beat them.

Under what circumstances would section 1203 be utilized?

Mr. HAMMER. That is a fair question, but I am not sure I have the precise answer to what that would be.

First of all, I guess I would remind ourselves, and the Europeans, too, it has not been all that long since the United States used export subsidies. It seems to many of us that it has been years and years, but it really in effect has not been that long.

In recent conversations with the European Community, I was trying to explain our concept of how world trade ought to be conducted. They brandished the red GATT book at me and said, in essence, they were doing no more and no less than GATT rules allowed. I admitted that we would determine that under our 301 cases.

I said, "Are you telling me that we should follow your interpretation of that red book and subsidize our products? 'I got no answer to my question.

What you say is true. That is one way to go. We feel that it is preferable to restrict export subsidies rather than to engage in them. We could do that, and I think that we would have a better chance of winning markets because we start from a much lower

price. If it takes $3 to sell wheat, for example, and that is our price, we can probably get that with a quarter subsidy while it will cost the Europeans a $3.25 subsidy to get that market.

I should say that the United States is not alone in being impacted by the EC policies. Many countries have come to us and said, "We are behind you. We are glad that you finally are making a vigorous attempt to curb the EC's use of export subsidies."

We, in effect, would have a similar adverse effect on other countries if we start subsidizing, and I think we could start a chain reaction. That, of course, is one policy.

Senator DANFORTH. We would not be creating a chain reaction. We would be in the middle of a chain reaction.

Mr. HAMMER. That is exactly right. The decision is the European Community's.

Senator DANFORTH. Supposing we were to lose the subsidies case in the GATT, that would almost be an invitation to us, wouldn't it?

Mr. HAMMER. It seems to me that that is correct.

Senator DANFORTH. If we were to win, it would be an available mechanism.

Mr. HAMMER. It is always an available mechanism. I would prefer that we get the trade rules to the point where this kind of unfair trade practice is prohibited. If not, it is certainly a possibility.

Senator DANFORTH. That is right, we always hope for the best. But the question is, what do we have up our sleeve, what would we be willing to use if it became necessary?

Mr. HAMMER. I get a little weary of hearing that the agricultural exports are so important to the European Community. If they think they are important to the European Community, I can assure them that they are doubly important to the United States, and we will work to preserve those export markets.

Senator DANFORTH. I am confident that the USTR, the Department of Agriculture, and the administration would have the support of Congress in pursuing whatever remedies or whatever approaches are necessary to correct the situation—not only from the standpoint of agricultural economics, which is very important to all of us, but also from the standpoint of our credibility in trade policy.

I think that we rely so much on posture, so much on verbal wrath in an effort to move another country that there is the danger that we will find ourselves crying wolf. We have to look down the road and anticipate, before we cry wolf, what we are prepared to do.

It seems to me that what we must be prepared to do in the area of subsidies on European agriculture, is to pursue whatever remedies are necessary to correct the situation. If that means that, pursuant to section 301, we impose tariffs on French wine or whatever, or if it means that under the section 1203 of the bill that we passed last year we conduct our own subsidies program, we are just going to have to follow through now that we have entered into the process.

Mr. HAMMER. Mr. Chairman, I sincerely feel that the Europeans do not have any doubt about our resolve in this matter.

Senator DANFORTH. Senator Long.

Senator LONG. Let me just talk about what they are doing to people. My understanding is that the Europeans are paying their producers of sugar about 27 cents a pound to produce sugar. Then they are producing a huge surplus, dumping it on the world market for anything that it will bring. So they knock the world market price down somewhere between 10 and 12 cents.

I know that our producers here are highly mechanized, but we can't make it on that. That is a death sentence as far as our people are concerned. Even worse from the international point of view, they have cut off the little countries in Latin American who have sugar only for export.

A country like Haiti, which has the lowest per capita income of any nation in the free world or the lowest in the entire world, how can it take care of its people when all they have to export is sugar, in any quantity anyway, when the Europeans are just dumping that stuff and wrecking the economy for them.

It seems to me that if this is how it is going to be, we have the right to withdraw from this subsidies code and we ought to. We ought to withdraw from it, and play that game with them. For example, while they are dumping sugar, then rather than give away all that surplus cheese over here, just dump it out on the world market. It will just break their market, if we just dump it all out there, and do to them what they are doing to others.

While you are at it, when they are doing something that we believe to violate the rules—assuming that it does violate the rules, but by the time you get through all the legal procedures, and finally you get them to stop it, there is all the injury that has occurred meanwhile.

What you to do, I think, when they are violating the rules like that, is play the same game with them. Just pick something to do to them that is equally as violative of the rules, "You sue us like we are suing you. Meanwhile, we are going to do to you the same thing you are doing to us." That comes nearer to making them behave, than just to drag this thing interminably through the procedures, the hearings, and the interminable evidence gathering activities.

How do you feel about that?

Mr. HAMMER. We are trying to pursue things through the system, if you will. As you pointed out, the system is slow and cumbersome. One of the things that I think we need to determine is that there should not be a set of distinct rules for primary versus nonprimary products.

I believe strongly that the subsidy code should not permit subsidies for agricultural commodities, but that is not, however, the agreement to which we are a signatory, and we have some differences of opinion on how that is to be interpreted from the European Community. We are trying to determine this.

To use your example on sugar, I just don't know how much longer we can sit idly by. The European subsidy for sugar is what caused the low price in the world. It caused us, I am quite sure, to reinstitute a sugar program. If it had not been for that, sugar may have been at reasonable prices without that.

The wheat subsidy has caused the Secretary of Agriculture to call on our farmers to voluntarily idle 10 to 15 percent of their

land. In my opinion there is no doubt that the Secretary would not have to have done that if it had not been for Europeans wrecking the world price for grains.

I just don't know how much longer, Senator Long, we can tolerate that, and I believe that your point is well taken.

Senator DANFORTH. Senator Bentsen.

Senator BENTSEN. I don't have any questions, Mr. Chairman.

Senator DANFORTH. Just one last comment, the same one that I made to Ambassador Brock.

Would the Department of Agriculture be willing to address itself to a possible relationship between excess supply of agricultural products in Europe and in the United States and the problem that the European excess production causes us, together with the obvious shortage of food in desperately hungry parts of the world.

I don't know what the handle is, but it seems to me that some creative thinking might be useful. It certainly is not going to solve the problem of the subsidies, but part of the problem is what to do with the large quantity of food that cannot be consumed in Europe, and the large quantity of food that cannot be consumed in the United States. Perhaps a portion of that could be, in a cooperative way, distributed to people who are really in very bad shape.

Mr. HAMMER. Mr. Chairman, we have to keep things in perspective.

First, we would gladly examine any possibilities that we have here. I recall a Wall Street Journal analysis in November 1980, following an USDA's outlook Conference that the Department of Agriculture had each year where the headlines were: "The U.S. can no longer afford to be the breadbasket of the world, and shortly we will have a conflict between high consumer prices for food and exports." That was just a little more than a year ago when we were predicting very bad crop production. So things can turn around very quickly in the agricultural field. We certainly don't have that problem now, I can assure you.

In 1954, The United States did come up with a program that was designed to do just what you are talking about, Public Law 480, and one of its major concerns was the removal of surplus products from the marketplace to areas of the world that needed them. Unfortunately, due to budget concerns and other factors, that program has not grown dramatically and in some cases is smaller in dollar value, while we have been able to ship more volume because the world price has been a lower in the last year.

We do have to remember that we have to remunerate the producer of this product or this commodity, and somehow pay to get it shipped and into those countries where it is needed. So the key really is money. It is either taxpayers' money or somebody's money That is really the answer that will probably come of any solutions that we try to come up with.

Senator DANFORTH. Looking at the European side also, their governments are paying farmers to produce food that is not needed, and then they are trying to get rid of the food. Tney want to sell it, and their selling of it is what gives us problem.

I know the Public Law 480 problem, and know the budget problem with Public Law 480, and I regret it. It seems to me that this might be an opportunity, among countries, to figure out something

which is positive and which is creative. It will not be absolutely free, but it will solve what is an expensive economic problem, or be a part of a solution to an expensive economic problem and at the same time keep people alive.

I don't ask you to answer or develop a program while you are sitting at the witness table. But if your Department, together with the USTR and anyone else you can think of, could at least give it some attention, and see if there is not some handle that we could get on it.

Mr. HAMMER. Yes, sir, we will be happy to take a close look at it.

Senator DANFORTH. Thank you very much.

Senator BENTSEN. Mr. Chairman, I do have one question.

Mr. Secretary, I would like to pursue with you for just a moment one question that I asked Ambassador Brock, and that is this question under article 10 where they refer to the underpricing of U.S. goods. That situation is a usually pretty private affair, where you have tenders and then you have sealed bids made against them. I am concerned about the availability of that information, Ambassador Brock talked about the difficulty of getting it.

If you can't get that information, what good is that particular provision?

Mr. HAMMER. It is true, Senator Bentsen, it does make the job more difficult, but as we have indicated in our testimony, we have tried to do this in cooperation with the concerned private industries and individuals that are out there on the firing line and generally know the competition that they are faced with before we do.

I will not characterize it as a decision that is general to everyone, but in some cases, working with the industry for purposes of their own, there has been some reluctance to give us pricing information, and it does make our job more difficult.

We try to indicate to them that we can do a better job for them if we have it, but there is no way that we can extract it if they feel that for confidentiality reasons, or other reasons, it is in their business interest not to do so.

We have to try to convince them that this is another business interest and this may have more overall long-term impact on them than their other decisions. We try to treat it as confidentially as we can once we obtain that.

Senator BENTSEN. Have there been violations of that confidence that would lead to more difficulties in obtaining the information?

Mr. HAMMER. None that I am aware of, sir.

Senator BENTSEN. Thank you.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, Mr. Hammer.

Mr. HAMMER. Thank you, sir.

Senator DANFORTH. The next witnesses are Robert Hampton, Robert Frederick, and Lee Campbell.

STATEMENT OF ROBERT N. HAMPTON, VICE PRESIDENT, NATIONAL COUNCIL OF FARMER COOPERATIVES, WASHINGTON, D.C.

Mr. HAMPTON. Thank you, Mr. Chairman.

First of all, I want to express my strong thanks for your initiative, and for the concern of the various members of the committee,

about many of the trade issues that are vital the American agricultural community.

My organization, speaking for a large number of the major farmer cooperatives of the country, represent the interests of a large number of the farmers of this country who own these cooperatives. We think it is important to stress also that the concerns that have been talked about as farmer concerns are, indeed, national concerns. They are very important.

I will make just a brief statement, and I would like to have my entire statement submitted for the record.

We are very much concerned, among all the trade distorting measures that face us, about the use of export subsidies which are severely damaging traditional U.S. agricultural export markets.

As in the case of the European Community, these often represent a transfer of the cost of internal policies to outside suppliers, and are thereby unfair trading practices which violate the spirit and often the specific understandings of the General Agreements on Tariffs and Trade.

Such practices are reversing the accomplishment of years of tariff barrier reducing negotiations by the world's major trading nations, which have led to more open and greatly expanded world trade. They are in sharp opposition to the thrust of the export subsidies code which was a central element of the recently completed Tokyo round.

If unchecked, they represent a serious threat that unilateral and unwise protectionist actions could disrupt the world trading system and lead to critical international economic conflict.

As evidenced in our statement in a January 12 letter to the President, along with 43 other agricultural groups we commend all our U.S. trade leaders for stepped up efforts to deal with this problem. We applaud the statements made here by members of this committee this morning, urging the administration to act more forcefully and not to overreact to the European threats that if we take steps to express our protest through legally approved procedures, we are going to start a trade war.

We do think that section 301 is a valuable tool which can be used in a constructive fashion to reverse this dangerous trend toward the greater use of subsidies in world trade. We are indeed concerned about the ambiguity of the terms defining criteria for violation of the subsidies code, namely equitable share and materially undercutting.

We hope that aggressive advancement of these cases that are now in process will help to sharpen those definitions. If that cannot be done, obviously we are going to have to take some further steps in the way of either legislative remedies or some productive multilateral negotiations to pin this issue down.

I certainly agree with Mr. Hammer that it would be desirable if we could remove agriculture from the exemption, and have agriculture and primary products covered under the prohibition of export subsidies.

With that brief statement I will conclude and accede to my colleagues here, Mr. Chairman. Thank you very much.

[The written statement of Mr. Hampton follows:]

Statement of
National Council of Farmer Cooperatives
Before
Senate Finance Subcommittee on International Trade
on
Export Subsidy & Other Trade Issues
February 11, 1982

I am Robert N. Hampton, Vice President, Marketing & International Trade, of the National Council of Farmer Cooperatives. We appreciate the opportunity to present our views on U.S. agricultural trade matters, and to express some of our special concerns relative to growing use of export subsidies or similar trade-distorting practices which are seriously depressing U.S. agricultural export opportunities today.

The National Council of Farmer Cooperatives is a nationwide association of cooperative businesses which are owned and controlled by farmers. Its membership includes 117 regional marketing and farm supply cooperatives, th 37 banks of the Farm Credit System, and 31 state councils of farmer cooperatives. National Council members handle practically every type of agricultural commodity produced in the U.S., market these commodities domestically and around the world, and furnish production supplies and credit to their farmer members and patrons. More than 80 percent of U.S. farmers are affiliated with one or more cooperatives. The National Council represents about 90 percent of the more than 6,700 farmer cooperatives in the nation, with a combined membership of about 2 million farmers.

U.S. farmers and agricultural exporters are alarmed at the decline in export activity, (e.g. down by more than 10 percent for

corn, wheat and soybeans) which along with other economic pressures has greatly depressed farm prices and is adding to serious U.S. trade balance problems that further threaten our efforts toward national economic recovery.

While we face many unfair barriers which limit our exports, among them unjustifiable Japanese quotas for citrus, beef and other U.S. products, we are particularly distressed by export subsidy practices of the European Community and other trading partners which represent unfair competition. Such actions reverse the efforts of the Tokyo Round to develop a fairer and more rational code of subsidy practices in world trade. These growing subsidies represent in many cases a transfer of the costs of internal farm programs to outside suppliers. In the many instances where traditional U.S. foreign markets have been disrupted by European subsidized shipments, U.S. farmers are bearing the brunt of unfair, often illegal under the GATT, trade practices.

We have already lost billions of dollars in American export trade as a result of EC subsidies, which are estimated as being at an annual level of over $6 billion. There are fears that European grain exports could rise by as much as 50 percent within 3 years, and you will hear from other witnesses today how seriously many other U.S. agricultural product export volumes have been damaged. And thousands of jobs are lost for every $1 billion loss in exports.

In addition to our concerns over the direct harm from increasing use of export subsidies to displace traditional American markets, we deplore this practice as a reversal of the positive

steps agreed upon in the Tokyo Round of multilateral trade negotiations toward reduction of the use of subsidies in world trade. The modest progress made toward a fairer world subsidy code was viewed as a centerpiece of these negotiations. The United States made clear its sincere determination to move toward a more open and rational world trading system by acceding to the injury test in countervailing duty cases, in exchange for progress on a meaningful subsidy code. In view of the recent growth in use of subsidies, in contradiction of Tokyo Round agreements, it appears to many observers that we have "bought a pig in a poke". Not only have EC and other countries stepped up subsidy activities, but in several instances they have failed to comply with the GATT mandates for prompt consultation, conciliation and other dispute settlement procedures.

Farm sector trading interests would prefer it if government-to-government negotiations and dispute settlement activities could deal satisfactorily with these problems. When that has not happened, it has been incumbent on the damaged commodity interests to take steps, through use of Section 301 of the Trade Act of 1974, to improve their prospects for relief. All too often, these cases have dragged on for long periods of time, sometimes because of their complexity, but in many cases because of an intransigent attitude on the part of the subsidizing nations or because they have mistakenly argued that injury must be one of the criteria for action in resolving such disputes.

We believe that the appropriate and agressive use of Section 301 can be a useful U.S. trade policy tool to reverse the trends of increasing use of export subsidies in world trade and to enable

us to move toward a fairer, more comprehensive and more enforcible world subsidy code. If we fail in demonstrating the credibility of this central element of the Tokyo Round achievements, the dangers of increasing unilateral protectionist moves will be greatly increased, and the benefits of our long time efforts toward a more open and efficient world economic order will be lost. Such developments could be disastrous in a world already filled with economic and political conflict and confusion.

These concerns and actions do not represent lack of U.S. awareness of the European need for a common agricultural policy. Instead, we ask only that the costs of such a policy, in its commendable objective of restructuring and strengthening European agriculture, be borne by the European Community rather than by American farmers.

We have expressed our great concern over the subsidy situation in a letter to the President, signed by the National Council and 43 other agricultural groups. I would appreciate it if this letter and a press release of that date be included with my statement as a part of this hearing record. We again would express our thanks to Finance Committee Chairman Dole for his concern and his initiative in inserting these documents into the Congressional Record for January 28, 1982.

On behalf of our nation as well as our farmers, we urge this committee to make full use of its great influence to support and encourage the increasing efforts of U.S. agriculture and U.S. trade negotiators to deal with unfair trade barriers such as the use of export subsidies. I appreciate the opportunity to express our concerns on this vital matter.

Summary

U.S. agricultural interests are greatly concerned about the increase in use of export subsidies which are severely damaging traditional export markets. As in the case of the European Community, these often represent a transfer of the costs of internal policies to outside suppliers, and are thereby unfair trading practices which violate the spirit and often the specific understandings of the General Agreement on Tariffs & Trade.

Such practices are reversing the accomplishments of years of trade-barrier reducing negotiating by the world's major trading nations, which have led to more open and greatly expanded world trade. They are in sharp opposition to the thrust of a world subsidy code which was a central element of the recently completed Tokyo Round. If unchecked, they represent a serious threat that unilateral and unwise protectionist actions could disrupt the world trading system and lead to critical international economic conflict.

As evidenced in our statements in a January 12 letter to the President, along with 43 other U.S. agricultural groups, we commend U.S. trade leaders for stepped-up efforts to deal with this problem. Section 301 is a tool which can be used in a constructive fashion to reverse this dangerous trend toward greater use of subsidies in the world trade.

STATEMENT OF ROBERT FREDERICK, LEGISLATIVE DIRECTOR, NATIONAL GRANGE, WASHINGTON, D.C.

Mr. FREDERICK. Thank you, Mr. Chairman.

I, too, share Mr. Hampton's gratitude for holding these hearings, and particularly to Senator Bentsen who has made three excellent speeches in the Senate, which were well documented and very factual.

I am Robert Frederick, legislative director of the National Grange with headquarters at 1616 H Street, NW., Washington. The National Grange is a general farm organization representing nearly half a million members in 41 States, and as a general farm organization we appreciate this opportunity to express our concerns.

The National Grange has a continuing interest in promoting the export of agricultural commodities. The Grange has advocated liberalized trade between nations and supports international trading rules to govern such trade. Trade between nations must be conducted in an orderly fashion, on a nondiscriminatory basis, and in a fair manner.

The heart of this is embodied in the General Agreements on Tariffs and Trade, in article 1 which provides for most favored nation treatment between countries. This has been the foundation of the U.S. trade policy and it should be continued.

This hearing on section 301 and the subsidies code is particularly appropriate. At the present time, agricultural exports from the United States face barriers to trade, the most famous of these barriers exists in the European Economic Community and their common agricultural policy, in the NTB's and quantitative restrictions of Japan. The Senate, and in particular this committee, is completely familiar with the many obstacles existing in both of these countries.

Section 301 provides the private sector with the opportunity to insist upon the United States pursuing an unfair trade practice affecting a U.S. commodity. It is an important statute and should be preserved, used to its fullest extent and improved.

At the present time there are a number of existing 301 cases which are quite old, as well as some that are fairly recent. All of these cases deserve attention and should be pursued vigorously until the unfair trade practices are removed, even if other remedies must be used. If the United States is going to continue to resist protectionist efforts, then it must use all the resources at its command to open foreign markets and remove existing barriers to trade.

The Senate Finance Committee, in its oversight function, might wish to review on a regular basis how the 301 cases are progressing. It may also wish to remind our negotiators that it is simply not sufficient to indicate that the other countries are difficult to negotiate with on agricultural matters.

We must find solutions and our cases must be prosecuted with success. If this cannot happen, then we must all admit that the General Agreements on Tariffs and Trade serves only as a focal point for conversation.

The same is true of the subsidies code, it must be used aggressively and effectively. At present there are agriculture cases being pursued under the subsidies code, and we are all awaiting to see what the outcome will be. The pending cases provide an excellent opportunity to determine whether or not the subsidies code will work.

The Grange has been particularly concerned about the EEC's comments that the subsidies code legitimizes the EEC's subsidies practice. If this is so, then all of agriculture was fooled at the time of the trade negotiations.

At this point, I would like to inject that as a member of the Agricultural Trade Policy Advisory Committee on the MTN, the agricultural community made it emphatically clear to the U.S. negotiators that the acceptance of the subsidies code should not be interpreted by the Common Market as acceptance of their subsidies program.

How the pending cases are resolved will serve to illustrate whether the subsidies code will work or the United States need to implement its own action against foreign subsidies. One thing is clear, the U.S. agriculture cannot prosper in the face of the subsidy practices being encountered in the world market today.

The Grange calls upon the subcommittee, as well as the full committee, to take an active stance on trade and insist upon the removal of barriers to agricultural exports wherever they exist. This is particularly true in Europe and Japan where they cannot be justified. Certainly no one, including the Japanese, can legitimately defend the maintenance of their quota on agricultural products, these must be removed promptly.

Thank you, Mr. Chairman, for your attention. I will be happy to respond to any questions.

[The written statement of Mr. Frederick follows:]

STATEMENT OF ROBERT M. FREDERICK, LEGISLATIVE DIRECTOR, THE NATIONAL GRANGE

Mr. Chairman and Members of the Committee:

I am Robert M. Frederick, Legislative Director of the National Grange, with headquarters at 1616 H Street, N.W., Washington, D.C. The National Grange is a general farm organization representing nearly half a million members in 41 states.

The National Grange has a continuing interest in promoting the export of agricultural commodities. The Grange has long advocated trade between nations and supports international trading rules. Trade between nations must be conducted in an orderly fashion on a nondiscriminatory basis and in a fair manner. The heart of this is embodied in the General Agreement on Tariffs and Trade (GATT) in article I which provides for most favored nation treatment between countries. This has been the foundation of United States trade policy and it should be continued.

This hearing on Section 301 and the Subsidies Code is particularly appropriate. At the presen time, agricultural exports from the United States face many barriers to trade. The most famous of these barriers exist in the European Economic Community (EEC) and Japan. The Senate is completely familiar with the many obstacles existing in both of these countries.

Section 301 provides the private sector with the opportunity to insist upon the United States pursuing a matter. It is an important statute and should be preserved, used and improved.

At the present time, there are a number of existing 301 cases which are quite old as well as some that are very new. All of these cases deserve attention and should be pursued vigorously. If the

United States is going to continue to resist protectionist efforts, then it must use all the resources at its command to open foreign markets and remove existing barriers to trade.

The Senate Finance Committee in its oversight function might wish to review, on a regular basis, how the 301 cases are progressing. It may also wish to remind our negotiators that it is simply not sufficient to indicate that the other countries are difficult to negotiate with on agricultural matters. We must find solutions and our cases must be prosecuted with success. If this cannot happen, then we must all admit that the General Agreement on Tariffs and Trade serves only as a focal point for conversation.

The same is true of the Subsidies Code. It must be used aggressively and effectively. At present there are agricultural cases being pursued under the subsidies Code. We are all waiting to see what the outcome will be. The pending cases provide an excellent opportunity to determine whether or not the Subsidies Code will work.

The Grange has been particularly concerned about EEC comments that the Subsidies Code legitimizes the EEC subsidy practices. If this is so, then all of agriculture was fooled at the time of the trade negotiations. How the pending cases are resolved will serve to illustrate whether the Subsidies Code works or the United States needs to implement its own action against foreign subsidies. One thing is clear, United States agriculture cannot prosper in the face of the subsidy practices being encountered in the world market today.

The Grange calls upon this Subcommittee as well as the full Committee to take an active stance on trade and insist upon the the removal of barriers to agricultural exports wherever they exist. This is particularly true in Europe and Japan where there can be no excuse for them. Certainly no one, including the Japanese, can legitimately defend the maintenance of their quotas on agricultural products. These must be removed promptly.

Thank you, Mr. Chairman for your attention. I will be happy to answer any questions you may have.

APPENDIX A

Robert M. Frederick, Legislative Director

NON-TARIFF TRADE BARRIERS

National Grange Policy

The following is an excerpt from National Grange policy first adopted in 1970 in Boise, Idaho at the 104th Annual Meeting of the National Grange.

Farmers throughout the world share in common the problem of obtaining a fair return for their labor. The job of trade policy must be to reconcile the desirable objective of expanding the trade opportunities for efficient producers with the right of farmers to a full parity return for their products. The United States has much to lose if it does not vigorously seek the reduction and elimination of tariff and non-tariff trade barriers against its agricultural producers.

We must, however, be as vigorous in opposing protectionism at home as we do abroad, since excessive protection of our domestic markets will generate the same protectionism of our markets abroad. It is unlikely that much headway against such measures can be made if the United States creates new trade barriers of its own which are inconsistent with fundamental principles, except as a means of breaking down trade barriers as authorized by Section 252 of the Trade Expansion Act of 1962.

Although encouraging progress has been made under GATT in promoting less restrictive trade between nations of the world, we are concerned by the growing obstacles to trade in agricultural products through the use of non-tariff trade barriers such as gate prices and the variable levy system of the EEC. These measures oppress our commerce and deny our agricultural exports market access on an equitable basis and deny access on terms which are consistent with the terms of access which their good enjoy in the U.S.

Therefore, the Grange recommends:

1) that policy makers place greater emphasis on expanding foreign markets for agricultural commodities by (a) strong protests and counteractions against governments that do not comply with GATT and that impose artificial and unrealistic barriers to our farm products, (b) negotiating farm and nonfarm agreements in the same treaty, and (c) increased market development activities abroad that would enable United States farm products to maintain or increase their market share.

2) that the U.S. continue to adhere to the principles of the General Agreement on Tariffs and Trade (GATT) under which our nation has taken the lead in working toward a reduction in the obstacles to trade and in expanding trade on the basis of sound economic principles.

3) far more vigorous action and hard bargaining be undertaken on the part of our government to bring about the elimination of non-tariff trade restrictions being maintained against U.S. agricultural products through the use of powers provided under Section 252 of the Trade Expansion Act.

4) that East-West trade should be conducted under special trading rules established through direct bilateral negotiations with such countries.

STATEMENT OF LEE CAMPBELL, PRESIDENT, POULTRY AND EGG INSTITUTE OF AMERICA, ARLINGTON, VA.

Mr. CAMPBELL. Thank you, Mr. Chairman.

We, too, are highly appreciative of the interest this committee is showing in this particular issue. The poultry and egg industry has achieved record exports of its products in the past dozen years. This has been done in spite of adverse elements that exist. However, much more could have been done if fair access were granted to our products and if we did not have to contend with the subsidies granted by our competitors.

The one thing that emerged from the multilateral trade negotiation which gives our industry high hope is the subsidies code. Last September, as has been discussed earlier, the U.S. poultry industry filed a petition under section 301 of the Trade Act to test the subsidies code. The petition has been accepted by the administration and the process is underway.

I would like to also express our concern that was expressed by Ambassador Brock about the delays in the response by the EC. They were very slow in responding to the poultry matter. I think if that response is slow, then the administration ought to proceed to the next step.

I also would like to comment on Senator Bentsen's statement regarding the Government proceeding on its own initiative. We have wondered many times why that is not done more often, and why it was necessary for us even to initiate the petition since our problem was well known in the administration.

There is need for a strong commitment at high levels in our Government to be sure that the European Community recognizes that the United States is serious about unfair practices and intends to do something about them. We cannot stand idly by and let the European Community deny its commitments to the subsidies code. We can't let the EC find ways of declaring certain practices are not covered, or that the code was meant to cover practices in which the EC has been engaged for years prior to the signing of the code.

In my statement, I touched on the fact that no sooner was the ink dry on the subsidies code than they raised their subsidies on poultry and expanded them to cover all poultry products. Between 1967 and 1968, the annual expenditures by the EC on subsidies for poultry increased 11 times. In 1979 and 1980, subsidies exceeded expenditures for the preceding 12 years. We cannot fight that kind of competition.

Since 1975, for example, the whole chicken market has grown almost 300 percent, yet the United States has been unable to capture even a third of that growth.

If the administration's policy is to hold off and prevent erection of protectionist barriers to imports into the United States, then it is essential that we remove foreign barriers to our exports. We simply cannot have a policy of not imposing protectionist barriers in the United States and not removing foreign barriers.

Thank you very much, Mr. Chairman.

[The written statement of Mr. Campbell follows:]

Statement of
Lee Campbell, President
Poultry and Egg Institute of America
Before the
Subcommittee on International Trade
Committee on Finance
United States Senate
February 11, 1982

Mr. Chairman, Members of the Committee, my name is Lee Campbell. I am President of the Poultry and Egg Institute of America, Arlington, Virginia, a national non-profit trade association representing those who produce, process and distribute chickens, ducks, eggs, turkeys and poultry and egg products.

The poultry and egg industry of the United States does not enjoy the benefits of any government support program--a price or production control program. It is true that our industry has been experiencing financial difficulties, there is no secret about that. If there is a bright spot on our horizon it is our export market and, thus, these hearings today are important to our industry, Mr. Chairman, and we compliment you for holding them.

In the late 1950's export sales of U.S. poultry and eggs were virtually non-existent. Through strong market development efforts in cooperation with the U.S. Department of Agriculture's Foreign Agricultural Service and dedicated efforts on the part of U.S. poultry and egg farms the U.S. has grown as an exporter. In fact, we are the world's leading exporter of poultry meat and should continue in 1982 exporting perhaps 440-470,000 metric tons around the world to many countries. Eggs and egg products exports have grown, too. In fact, they expanded 75% last year with Japan and the Middle East being our largest markets.

This has been done in spite of adverse elements that exist in the international marketing of poultry and eggs. These elements may be limited access to markets or other non-tariff barriers. More importantly, we face subsidies paid by our competitors, especially the European Community and Brazil.

The facts are that when fair access is accorded U.S. poultry and eggs, it has been demonstrated that we can compete anywhere in the world.

Because the U.S. poultry industry was the first to feel the brunt of the European Community's Common Agricultural Policy in 1962 and because of the variety of non-tariff barriers that have existed against our products in other markets, we watched with anticipation the Multilateral Trade Negotiations--the so-called Tokyo Round. Unfortunately, we got little from those negotiations. Nothing was done about the highly protectionist EC Common Agricultural Policy that can so successfully control the flow of poultry and eggs into the E.C.

But one thing did emerge from the MTN--a Subsidies Code.

The Agricultural Technical Advisory Committee for Trade Negotiations for Poultry and Eggs, of which I was chairman, said in its report to the President, June 13, 1979:

> " The most interesting code to this Committee is the Subsidies Code. We have repeatedly urged that every effort be made to do away with subsidies which allow trading partners to compete unfairly against U.S. poultry and egg products. The EC, particularly, has not only engaged in practices which wall-out shipments to the EC from third countries, but it has used subsidies to compete unfairly in markets around the world.
>
> The Subsidies Code does not, in itself, solve the problem that concerns us, but it, perhaps, offers a medium for solving the problem.
>
> It is one thing to have a Subsidies Code, provided, of course, that other countries agree to it, but unless there is a method for making it incumbent upon the United States to utilize it, it is a worthless tool.
>
> For example, Section 301 of the Trade Act provides ways of dealing with unfair trade practices of other nations but it has not been utilized.
>
> The U.S. position on the Subsidies Code has been that phrases in the current GATT methods of dealing with subsidies are difficult to quantify. In particular, the phrase "equitable share of the market" has been all but impossible to define.
>
> The concept under the code, would among other things, provide that subsidies would be prohibted when the use of any such subsidy displaces the trade of other countries in third-country markets or results in material price under-cutting in such markets.
>
> We do have some concern about how much easier the term "priced materially below" those of other suppliers to the same market is to define than "equitable market share". The real test would probably come through test cases if the code is implemented.

> The Committee is especially concerned about an EC subsidy action which was announced before the ink was dry on the EC's signature subscribing to the Subsidies Code. Effective June 1, 1979, the EC began subsidizing chicken parts in addition to whole birds. In spite of the EC's expressed agreement to the Subsidies Code, we are again faced with their utter disregard for fair trading practices.
>
> This clearly points to the need for the U.S. to take strong action and utilize the options available to it under the Subsidies Code. The Committee is hopeful that the Congress will make it clear to those responsible for U.S. trade policy its intent that prompt action should be taken by the Administration to counter any unfair subsidies paid to price poultry and/or eggs materially below those of other suppliers and thus take over U.S. markets."

Last September, the U.S. poultry industry set out to test Section 301 and the Subsidies Code. A petition was filed by the National Broiler Council, the Poultry and Egg Institute of America and ten state poultry and egg associations, charging that the United States has been prempted from participating in significant world markets on account of the bestowal of unjustified and unfair export subsidies. As a direct result of the subsidies, producers within the EC have gained more than an equitable share of world export trade at prices materially below prices charged by the U.S. in various world markets.

The petition has been accepted by the Administration and the process is underway, beginning with consultations with the EC this month.

It is too early, Mr. Chairman, to address the effectiveness of section 301 in enforcing trade agreement rights of the United States. We are pleased that the Administration has accepted industry's petition. We are pleased with the dedicated efforts of staffs of the Special Trade Representative and the U.S. Department of Agriculture to develop a strong case against these unfair barriers. There is need for a strong commitment at high levels in our Government to be sure that the EC recognizes that the U.S. is serious about unfair trade practices like subsidies and that we intend to do something about them.

We cannot stand by idly and let the European Community deny its committment to the Subsidies Code. We cannot let the EC find ways of declaring that certain products are not covered—or that the Code was not meant to cover practices in which the EC has been engaged for years prior to the signing of the code.

Between 1967 and 1978, annual expenditures by the EC on subsidies for poultry meat exports have increased eleven times. In 1979 and 1980 subsidies exceeded total expenditures for the preceding 12 years. One-hundred million dollars was spent on poultry meat subsidies in 1980. Add to that the subsidies paid on eggs and egg products and the ammounts are staggering. We cannot fight that kind of competition.

Let me, for the record, recount the effect of EC subsidies on U.S. and on EC exports of whole chickens (as recorded in the 301 petition filed in September, 1981 by industry):

> "Since 1975, the whole chicken export market has grown almost 300 percent, yet the U.S. has been unable to capture even a third of this growth.

In 1980, if the U.S. were to have increased its share of E.C.--U.S. whole chicken exports by 1 percent, domestic producers would have gained an additional $6.3 million in export sales.

Attaining a 10 percent share of the combined E.C.--U.S. whole chicken export market would result in additional annual export sales of approximately $120 million for U.S. producers.

Between 1975-1979, the E.C. captured 91 percent of U.S.--E.C. whole chicken exports to those countries to which it made its export refund available, and only 27 percent to those areas to which it did not make the refund available. Furthermore, the market for exports in the subsidized countries was three and one-half times larger than the non-subsidized market.

During the 1975-1979 period, the subsidized market for whole chickens grew 173,000 metric tons (200%), while the non-subsidized market grew only 42,000 metric tons.

In the Middle East, where the export refund has been in effect continuously, the whole chicken export market grew 63 times between 1971 and 1980. It now comprises over half the world market for whole chickens. Yet the U.S. has captured only 11 percent of combined U.S.--E.C. exports to this market during this period.

If during this growth period the U.S. had captured even an additional one percent of the Mideast whole chicken export market, it would have sold an additional $12 million of exports.

Had the U.S. captured half the combined E.C.--U.S. export market in whole chickens to the Mideast during this period, it would have gained an additional half billion dollars in export sales.

Based upon 1980 export sales, a loss of 5 percent market share for whole chickens in the Far East and Caribbean markets (where the E.C. has just reimposed export subsidies) would result in a loss of $2.5 million in export sales by U.S. producers.

The E.C. increased its 1980 share of U.S.--E.C. whole chicken exports form 13.4 percent to 31 percent in those countries to which the subsidy was previously not available between 1975 and 1979."

Mr. Chariman, thank you for the opportunity to discuss these serious issues today.

Senator DANFORTH. Gentlemen, thank you very much.

The United States last year had a very large deficit in trade, but it had a very large surplus in agricultural trade, some $20 billion or more surplus in agricultural trade. It was really the one positive feature of our trade picture.

Now some would argue that if we begin the pursuit of section 301 remedies for unfair trade practices by the EC, if we insist on a policy of reciprocity of access opportunity, if we respond to quotas imposed by Japan and any other country by imposing our own retaliatory restrictions, that would end up in a trade war, and other countries would stop importing from us. The result of a trade war would be that agriculture would suffer more than anybody else.

So that would be the argument in favor of pulling our punches. That would be the argument in favor of not pursuing section 301 remedies. That would be the argument in favor of not proceeding to enforce the full extent of whatever rights we have with respect to the European Community and its agricultural subsidies.

Do you think we should go slow? Do you think we should watch out for fear of the retaliatory action that other countries might have to our retaliation, or do you think that the time has come for us to stand on our legal rights.

Mr. HAMPTON. I think the time has always been here for us to stand on our legal rights. I think we are proceeding in ways that are entirely warranted. We are following the due process procedures.

Our major concern at the moment is that there have been so many unnecessary delays in the handling and the receptivity of our European trading partners to the 301 procedures, that we are entitled to exert more pressure.

We think that it is unrealistic, that our trading partners are going to use our actions as a pretext for either putting additional barriers on their market or looking for other sources for their supplies of products, because in the long haul world food markets are going to have to look more and more to the United States.

Really, we have become increasingly the world's breadbasket, the overwhelming margin of security in the world food picture. It has unfortunately left us in the position of being a residual supplier. However, many of the conditions that we face at the moment are forcing us in the direction of becoming a supplier of unprocessed or "primary" rather than of processed products.

We are concerned, obviously. We want to proceed in the right fashion, but we must proceed firmly. We know it is always difficult to deal with these situations where our greatest trading problems are with our best customers.

We have to do this thing in a fashion that is acceptable in terms of international diplomacy, but we have got to act with a firm hand, and I don't think we are doing anything to warrant the current rhetoric that we are the initiators of steps that might bring on a trade war.

Senator DANFORTH. Any other comments?

Mr. CAMPBELL. Yes, I would like to add to that, Mr. Chairman.

I think our problem has been that the EC in particular doesn't believe any of our threats. They have been empty threats in the past. We have talked tough from time to time over a number of

years, and they have gotten to the point where they don't believe we are going to do anything.

The three of us sat in a meeting with Commission Dahlsagger this week, when he told us that the EC market was the most open market in the world. If I told that to poultry producers, they would think I was in the wrong meeting.

Senator DANFORTH. Senator Bentsen.

Senator BENTSEN. Thank you very much, Mr. Chairman.

Mr. Campbell, one of the comments earlier by Senator Heinz was that when we start talking about countervailing duties, all of a sudden we get their attention, then they do something about it, at least for a while.

I think there is a lot to what you say, they just don't think we are going to get serious about it. However, they do respond when we take action.

I would like to say to Mr. Hampton, I read with great interest your letter to the President of January 12, and I tried to buttress that by also backing up that point, giving the highest priority to the elimination of these subsidies by CAP.

I appreciate very much your testimony this morning and the comments you have made. They are very helpful to us.

Mr. HAMPTON. We appreciate very much your strong position and your very strong statement of support here this morning, Senator Bentsen.

Senator DANFORTH. We are happy to be joined this morning by Senator Boschwitz who is a member of the Agriculture Committee, and the chairman of the subcommittee of that committee dealing with the international aspects of American agricultural policy. He has taken a keen interest in various barriers to U.S. agricultural exports.

STATEMENT OF HON. RUDY BOSCHWITZ, SENATOR FROM MINNESOTA

Senator BOSCHWITZ. Thank you, Mr. Chairman. I am sorry I missed the earlier part of your hearing, I was presiding in the Senate, but I will read it.

I essentially agree with the gentlemen that I have heard testify. Mr. Hampton, you say that we are the residual supplier and that countries have to look more and more toward the United States for food supplies.

Have you made any investigation, Mr. Hampton, of what the possibilities of increased supply by other nations are?

Mr. HAMPTON. I was referring to the type of situations or actions such as our embargoes of the 1970's, where the Japanese, in response to such actions, have put major investments into developing areas of production, for example, in soybeans in Brazil—that type of thing.

For the long haul, I think the trend we have seen for many years will continue. As time goes on, there are fewer areas in the world where surplus foods can be produced, and the United States and Canada continue to be contributors of a larger share of the agricultural goods available for trade in export markets.

Senator BOSCHWITZ. Mr. Chairman, did you discuss at all this morning the business of embargoes on which we held hearings recently?

Senator DANFORTH. We did not. Ambassador Brock addressed that question in one of his answers, but we did not go into that area.

Senator BOSCHWITZ. I certainly agree with these gentlemen that we cannot go on over an extended period of time and be afraid of exerting our proper trading rights because of fear others may consider remedial action.

Nevertheless, I think there is no question that there is an oversupply in many commodities in the world at the present time. There are large areas where additional production could be found in the event, Argentina being certainly a prime example, that we would embargo again, in the event that demand were to rise.

Food is not being produced in the world in all available areas, with all available types of farming methods, fertilization, et cetera. There is no question that vast amounts of production could come on to the scene if we are not careful in our embargo treatments and if we do not see to it that some of the barriers that exist are brought down.

I sat with Mr. Dahlsagger and I heard that the EC was our largest customer, that we had a very large trade surplus with them, and that we should treat them better. He certainly was, I think, stunned at our stance, as were some of the other representatives of that delegation, because there is a very concerted feeling and a very unified feeling among the State Department, Agriculture, Commerce, which has not always existed. I certainly share that feeling.

I really feel that you should focus on the ability of other nations to increase their production. We are not by any automatic sense going to just become the natural recipient of additional trade.

This was more in the form of a statement, Mr. Chairman, than a question, perhaps the witnesses wish to comment on the comment.

Mr. HAMPTON. Mr. Chairman, may I respond.

I think it is very useful that the subject of embargo should at least be mentioned in this hearing record. My own organization feels very strongly about several difficulties that we could impose on our entire trading picture by an embargo. U.S. agricultural interests in general are strongly opposed to embargo of agricultural products.

We are also opposed to embargo of all products, since that might provide us with even less protection. As you know, there are provisions in the farm bill that would attempt to give partial relief to farmers if agricultural products alone were embargoed. The cost of any foreign policy action taken in the national interest should be borne by the nation—not just by the sector directly involved.

At the January 1982 meeting of the membership of the national council, a resolution was passed to express this position to the President. I would appreciate it if a copy of our letter of Febraury 2, 1982 to President Reagan (attached) be included in this hearing record.

If, in the case of critical national security considerations, an embargo were to be imposed, some means should be found to assure

that its costs be distributed nationally and not borne just by U.S. agriculture or by U.S. exporters in general.

Senator DANFORTH. Gentlemen, thank you very much.

Mr. HAMPTON. Thank you, sir.

Senator DANFORTH. The next witnesses are Julian Heron, Mark Sandstrom, and Paul Rosenthal.

Senator BOSCHWITZ. There is a vote on in the Senate, so I am going to be leaving. I wonder if you would tell me, Mr. Heron, Mr. Sandstrom, and Mr. Rosenthal, who you represent.

Mr. HERON. Thank you, Mr. Chairman.

My name is Julian Heron, and I am here today on behalf of the National Soybean Processors Association, the Millers National Federation, the California-Arizona Citrus League, the Sun Diamond Growers of California, and the California Cling Peach Association.

Mr. SANDSTROM. I am Mark Sandstrom, and I represent the Great Western Sugar Co. We have the sugar 301 petition.

Mr. ROSENTHAL. I am Paul Rosenthal. We represent the National Broiler Council and a coalition of 11 other poultry organizations and associations, and also the National Pasta Association.

Senator DANFORTH. Mr. Heron, would you like to proceed first?

STATEMENT OF JULIAN B. HERON, HERON, HAGGART, FORD, BURCHETTE & RUCKER, REPRESENTING THE NATIONAL SOYBEAN PROCESSORS, THE MILLERS NATIONAL FEDERATION, SUN-DIAMOND GROWERS OF CALIFORNIA, THE CLING PEACH ADVISORY BOARD, AND THE CALIFORNIA-ARIZONA CITRUS LEAGUE

Mr. HERON. Thank you, Mr. Chairman.

With the understanding that the statements of each of the organizations will be submitted into the record, I will then proceed to go over the combined experience of the organizations with Section 301, if that suits you, sir.

Senator DANFORTH. That will be fine.

Mr. HERON. Thank you, Mr. Chairman.

Section 301 is an extremely important part of our overall trade policy because it provides for the continued cooperation of the private sector and its Government. For trade to work effectively, the Government and the private sector must work very closely.

It is not always possible from the private sector's point of view to persuade the Government that a case should be pursued. An example might be the case of almonds and India, where the almond industry asked the United States to remove a barrier affecting almond exports to India. Some agency's response was laughter, having made the determination that it would not be possible to sell almonds to India.

The Department of Agriculture did not take that position, and finally the barrier was removed, and the result was about $5 million in exports of almonds. In these days when we need every dollar of export we can get, every little bit helps.

Section 301 assists in providing a method for industries to go forward where the Government will not go forward on its own. The pursuit of 301 cases is particularly important if we, as a government and certainly the majority of the agricultural community,

wish to hold off taking protectionist measures. We must remove foreign barriers to trade so that we can export. It is simply not in the benefit of the United States or private industry to be prevented from exporting, while imports are liberaly permitted to enter our markets.

Historically, the use of section 301 has been successful in some, but not all, cases. The United States was successful for the soybean industry a few years ago in dealing with the Europeans' nonfat dry milk regulations. The same was true with the Europeans' minimum import price on canned fruit. More recently there was a lack of success in the case the United States initiated against Spain.

At the present time there are pending a large number of 301 cases, primarily in the agricultural field, and primarily against the European Economic Community. Those cases provide this committee with the opportunity to watch and see whether or not the European Economic Community in particular, but the Japanese and others as well, are willing to respect the rules of fair trade.

In pursuing these cases, it is important to bear in mind that the GATT is a political organization, and its decisions are reached primarily on a political basis. We have got to be careful in our approach to trade policy, 301 cases, and the GATT itself, that we do not become overly legalistic and end up working ourselves into positions that are not easily advanced.

We also must keep in mind that when the issue of damages is raised that that really, in most instances, is a sophisticated foreign argument. The Europeans maintain that damages can only be substantiated through historical statistical information.

Senator DANFORTH. Mr. Heron, let me interrupt you, if I might. There is a vote on the Senate floor and it is now halfway through. I have got to go over and vote. Senator Bentsen left before I did, so that he can hopefully come back in about a couple of minutes, maybe, and you can proceed at that time. We are going to have to take a very brief recess right now.

Mr. HERON. Thank you, Mr. Chairman.

[Recess.]

Senator DANFORTH. Mr. Heron, you may resume, and we will see what happens.

Mr. HERON. Thank you, Mr. Chairman.

We were discussing the need to exercise caution not to be taken in by the foreign argument of the necessity to prove damages in 301 or GATT cases. In the foreign view, damages can only be established through historical statistical information, and in the case of agriculture that means that we have to wait until we are extremely damaged in order to pursue the matter.

A violation of the rules of GATT itself should be sufficient to prevail if we are going to maintain rules of trade and conduct trade on an international basis in some orderly fashion.

The foundation of GATT is the most-favored-nation rule, sometimes referred to as the nondiscrimination clause. This committee is fortunate to have before it one 301 cases which provides the committee with the opportunity to find out whether or not GATT, and the Europeans in particular, are going to live up to their express obligations. The case is that which was filed against the EEC for its

discrimination tariff preferences. Senator Bentsen commented on it earlier because his State is one of those directly affected.

This committee, it will be recalled, passed a resolution 12 years ago calling upon the then administration to resolve the matter, and every Special Trade Representative since has talked about the illegal practices of the EEC in discriminating against the United States.

The case provides an excellent opportunity, because it is a clear-cut violation, for the committee to find out whether or not GATT is going to work, or whether it will be overcome by secret bilateral agreements.

It is necessary to move fast on agriculture. The current raisin case provides that example because the Europeans instituted their subsidy scheme for processing this past August, and by this past fall raisin exports from the United States had fallen 60 percent.

If great countries such as those in the European Economic Community and the United States cannot solve problems over a small commodity like raisins, not small to the farmers but small in terms of dollars, how will we ever solve our big problems.

We must be certain that we move the cases forward so the GATT does not become, in effect, a probate court for administering the estates of dead industries. That simply doesn't help anyone.

Thank you, Mr. Chairman.

[The written statements of Mr. Heron follow:]

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

STATEMENT OF
NATIONAL SOYBEAN PROCESSORS ASSOCIATION

Introduction

This statement is submitted on behalf of the National Soybean Processors Association in response to the Subcommittee's announcement of hearings on the effectiveness of Section 301 and the Subsidies Code. Our testimony will address the administration and adequacy of Section 301 as it relates to the U.S. soybean industry, as well as other major trade issues affecting our industry.

The National Soybean Processors Association (NSPA) is the trade association of America's soybean processors. Our members process and market more than 95 percent of all soybeans crushed within the continental United States. From nearly 80 processing centers in every major region of the nation, NSPA members serve the American agricultural community, American consumers and the world market.

During the most recent marketing year ending September 30, 1981, over one billion bushels of the 1.8 billion bushels of soybeans harvested in the United States moved through the processing plants of our association's 23 member firms. Our members bought and processed approximately 56 percent of our nation's soybean crop.

International trade is vital to the economic health of our nation's soybean growers, processors, and exporters. During the 1980/81 marketing year, the United States exported 720 million bushels of soybeans valued at $5.4 billion, 6.8 million short tons of soybean meal valued at $1.5 billion and 1.5 billion pounds of soybean oil valued at $345 million, for an aggregate export trade value of $7.2 billion. Exports represented approximately 40 percent of the soybean crop; 28 percent of the soybean meal; and 13 percent of the soybean oil production. The contribution of the soybean complex products to our nation's export performance and to the health of the U.S. balance of payments is unquestioned.

The NSPA represents an industry which has long been a highly successful and healthy export industry. However, we are concerned that the 1980/81 trade performance for our industry is down from the 1979/80 performance on all counts. Exports of soybeans declined by 155 million bushels; exports of soybean

meal declined by 1.1 million short tons; and exports of soybean oil declined by 1.2 million pounds. The total export dollar loss for the 1980/81 marketing year as compared to the 1979/80 marketing year was approximately $1.5 billion.

While changing export performances from year to year can perhaps partially be explained by changing economic conditions, over the years, our industry has been plagued by unfair trade policies of foreign governments which have caused distortion in our international export markets and negatively impacted the U.S. share of those export markets. Our domestic laws, primarily Section 301 of the Trade Act, have been involved on several occasions in our industry's recent history in an attempt to challenge and eliminate these unfair practices. This challenge has taken various forms which will be described below.

Section 301: EEC

In 1976, the National Soybean Processors Association, in conjunction with the American Soybean Association, filed a Section 301 case against the European Economic Community's scheme for disposing of its surpluses of non-fat dry milk which had the effect of imposing a major portion of the cost of EEC milk price support operations on third country soybean

producers such as the United States. The scheme further served to distort and confuse normal patterns of world trade in soybeans and soybean products.

The industry filed its petition under Section 301 on March 30, 1976, and the United States informed the GATT Council in April, 1976 that it had entered into consultations with the EEC under Article XXIII:1 of the GATT. On July 15, 1976, the United States referred this matter to the Contracting Parties and sought the formation of a panel pursuant to Article XXIII:2, since it had not been possible to reach a satisfactory resolution of the matter pursuant to consultations. On September 17, 1976, the GATT Council agreed to establish a panel, the composition of which was agreed to on March 2, 1977. The GATT panel issued its report on December 2, 1977. In mid 1978, the Contracting Parties adopted a report of the GATT panel which substantiated the U.S. position that practices of the EEC regarding certain requirements associated with the importation of soybeans constituted a violation of the EEC's GATT obligations.

Thus, it has been demonstrated that when the United States government chooses to put its full force and effect

behind efforts to protect the trade interests of U.S. industries, Section 301 and GATT procedures have in the past been effective tools.

Section 301 Case: Brazil

In 1976, the NSPA also prepared to file a Section 301 case against the government of Brazil seeking relief from Brazil's export subsidy and other direct and indirect assistance programs on soybeans, soybean meal and soybean oil exported outside the borders of Brazil. It was alleged by our industry that the export subsidies and other incentives were of sufficient magnitude so as to displace U.S. soybean and soybean product exports in third country markets.

The industry's intentions with regard to tne filing of a Section 301 case were made known by high ranking U.S. government officials to Brazilian government officials. As a result of these discussions, the government of Brazil eliminated the major forms of tax credits which were being applied to exports of soybean oil and which would have been a primary focus of the U.S. industry's complaint. Resolution of the matter short of filing a formal complaint was achieved through a joint cooperative effort at the highest levels of government. Secretary of the Treasury, William Simon;

Secretary of Agriculture, Earl Butz; and U.S. Trade Representative Frederick Dent, as well as other U.S. government officials, joined together to persuade Brazil to withdraw certain of its subsidies. The existence of the Section 301 procedure, coupled with aggressive and unified action by top government policymakers, combined to result in a reconsideration of policies by the government of Brazil.

Section 301: Spain

Spain produces only one percent of its soybeans and imports most of its beans from the United States. In 1975, it initiated a domestic quota on the amount of soybean oil which can be sold in Spain. Over the past five years, the quota has been set at progressively lower levels. As a result, soybean oil currently represents only 12 percent of Spanish vegetable oil consumption, less than half of what it was ten years ago.

The quota system serves to protect domestic producers of olive oil and sunflower oil. Not only does it deprive the United States of a natural Spanish domestic market for soybean oil produced in Spain from U.S.-origin soybeans, but it also distorts international trade patterns by displacing markets for U.S. origin soybean oil in third countries.

The trade distorting effects of this system are further exacerbated by a Spanish pricing system for soybean oil which subsidizes Spanish crushers' margins on domestic soybean oil sales by approximately $100 per metric ton. This subsidy enables Spanish crushers to be extremely price competitive, as compared with the United States, on soybean oil which has been purposely diverted to third country export markets.

In 1979, the office of the U.S. Trade Representative filed a GATT complaint against the Spanish system. USTR filed the case on its own initiative. In December 1980, to the great consternation of our industry, the GATT panel rendered a decision unfavorable to the United States despite assurances by USTR that the Spanish system was a clear-cut violation of GATT.

Subsequent to the adverse finding by the GATT panel, it was readily apparent to our industry that it was necessary to discredit the panel report in the GATT Council. Nearly another year elapsed before this important matter was finally brought before the GATT Council for resolution. The Council refused to adopt the panel report. This does not often happen. Equally as significant, our United States negotiators were able to enlist the support of approximately 20 countries who spoke up in opposition to adoption of the report at the GATT Council meeting.

This particular case is instructive. It demonstrates the importance that politics plays in GATT proceedings. Thus, it is essential at all stages of proceedings before the GATT to conduct a "lobbying" effort simultaneously with preparation of our legal case. Not only is it necessary to gain the support of GATT officials in Geneva, but it is necessary to work closely with other GATT Contracting Parties in order to obtain support among the GATT membership for the U.S.'s position. It is clear from our experience in the Spanish case that the Europeans understand the importance of the political aspects of the GATT.

Finally, this case is extremely important for reaffirming that a showing of injury is not required before an industry can seek relief from unfair trade practices in the GATT. Such a position would make the GATT a totally ineffective instrument for redressing its Signatories' trade grievances. Ambassador Mike Smith, representing the United States in GATT proceedings in Geneva, forcefully espoused the U.S.'s position that a breach of GATT rules is assumed to have an adverse effect on a complaining party and that injury was not required to be shown. As previously indicated, the U.S.'s position was supported by other Contracting Parties.

Although our industry is pleased with the outcome of the GATT Council meeting held on November 3, 1981, the Spanish system nonetheless remains intact and must be eliminated prior to Spain's accession to the EEC. The failure to eliminate the Spanish practices will, in our opinion, seriously jeopardize the zero duty binding for U.S. origin soybeans and soybean products into the EEC. The importance of the EEC as a market for U.S. soybeans and soybean meal is tremendous. A loss of the EEC market means a loss of nearly $4 billion in exports. Neither our industry nor the U.S.'s balance of payments can afford the loss of this revenue.

Our industry has not yet determined whether to bring its own 301 case against the Spanish system. The matter will be further considered by the industry and a decision made on how to proceed.

Other Major Trade Issues

The NSPA is greatly concerned about other developments in the international trade arena. First, the EEC has repeatedly proposed some form of tax on vegetable oil and fats in order to pay for its costly subsidies which are integral to the Common Agricultural Policy. Such tax, if adopted, would affect the consumption of soybean oil crushed in the EEC from

U.S.-origin beans and discourage the utilization of soybean meal in feed formulation. Thus, such a tax would represent a clear nullification and impairment of the zero duty bindings on soybeans and soybean meal and is tantamount to a request from the EEC to the American farmer to pay for the cost of its subsidization of uneconomic production. The EEC's efforts in this regard must be strenuously opposed by our U.S. negotiators.

The industry is also concerned with subsidies imposed by Brazil and Argentina, which, together with the United States, accounted for over 95 percent of the world export market of soybeans over the past five years. As a result of Brazilian differential export tax and preferential financing schemes, which serve to encourge exports of soybean products over raw beans, Brazil's share of world soybean exports has declined while its exports of soybean meal have continued to grow. This is also generally true for soybean oil. In 1980/81, Brazil's share of the meal and oil market surpassed that of the United States.

In 1980, The Government of Argentina instituted a system of export rebates on soybean oil and meal which, if unopposed by the United States, will have the same effect in the future as the Brazilian subsidies have had over the last

five years in eroding the U.S.'s share of world markets in soybean products. This will have disastrous effects for the U.S. soybean farmer.

Additionally, our industry is concerned that the government of Austria is proposing to impose import licensing fees for oil cake or to impose regulatory taxes in violation of commitments made in 1969 not to take such action.

Our industry also faces trade problems in Malaysia, which had proposed to increase duties on imports of soybean meal by 20 percent as well as to establish interim quotas on soybean meal imports. In March of this year, our industry was advised that the import duty on soybean meal was lowered from 15 percent to 8 percent but that the 5 percent surtax on soybean meal imports would remain. Our industry believes that Malaysia's continued imposition of levies on soybean meal imports constitutes an unfair trade barrier and that such levies should be removed.

Conclusion

Statements in recent months by top U.S. government officials point toward a new era in our U.S. trade policy as it relates to agriculture. A strong, cohesive trade policy to deal with increasing protectionism around the world and the resultant unfair trade practices is desparately needed.

Our industry has seen the results of use of Section 301 of the Trade Act and accompanying GATT procedures in varying circumstances. These cases demonstrate that the procedures can work, but their effectiveness is conditioned upon the degree of commitment and effort made by our responsible government officials. In this regard, we would urge the continuing participation and close involvement of the Congress in assuring that its intentions with regard to our nation's trade policy are carried out, and in assuring the continuing health of our nation's farmers and the U.S. economy.

Respectfully submitted,

Sheldon J. Hauck
President

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

STATEMENT OF
MILLERS' NATIONAL FEDERATION

The U.S. Wheat Flour Section 301 case, filed in 1975 against the EEC's practice of excessively subsidizing its exports of wheat flour, is one of the oldest pending 301 cases. After six years of unsuccessful bilateral discussions and consultations, the wheat flour industry is gratified to learn that the Subsidies Code has been invoked in our case. Because the Subsidies Code procedures are new and untested, the United States must do everything possible to assure a successful resolution of our case. U.S. negotiators must actively seek the support and assistance of other Signatories to the Code who are sympathetic to our position. If such actions are taken, the wheat flour industry is hopeful that the Subsidies Code will prove to be a viable tool for resolving trade disputes.

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

STATEMENT OF
MILLERS' NATIONAL FEDERATION

Introduction

This statement is submitted on behalf of the Millers' National Federation in response to this Subcommittee's announcement of hearings to review the effectiveness of Section 301 of the Trade Act of 1974 and the Subsidies Code.

The Millers' National Federation is the trade association of the U.S. wheat and rye flour milling industry. Our members own and operate 133 mills in 36 states and Puerto Rico. Collectively, the Federation represents more than three-fourths of this country's commercial flour milling capacity.

The Federation speaks on behalf of its members on matters of general industry concern including international trade policy. The Millers' National Federation has been active in international trade matters on behalf of its members since 1952.

The competitiveness of U.S. flour in world markets has been seriously eroded over the past two decades due to the EEC's practice of excessively subsidizing its exports of wheat flour in order to assure sales of its excess production in third country markets. Due to the EEC's practices, which effectively shut us out of most world commercial flour markets, more than 70 percent of total U.S. flour exports currently move under P.L. 480.

The EEC's subsidy is the subject of a Section 301 case filed by the Millers' National Federation more than six years ago. The case remains unresolved. The utilization and effectiveness of existing tools to seek redress from the EEC's practices as they have been applied to our case will be set forth below.

U.S. Wheat Flour Case Under the Gatt

The U.S. wheat flour Section 301 case is one of the oldest pending cases. It was filed in 1975 pursuant to Section 301 of the Trade Act of 1974. Consultations were held pursuant to Article XXII of the GATT in February of 1977. Both Canada and Australia participated in the consultations with the EEC. Those consultations were inconclusive.

Our industry was hopeful that this important matter would be resolved in the course of the Multilateral Trade Negotiations (MTN). The case was not resolved during the MTN, but as this Committee knows, a new Subsidies Code was developed.

Although the Subsidies Code went into effect on January 1, 1980, our negotiators initially failed to make use of this highly touted document in our case. Instead, in July of 1980, the United States agair requested consultations pursuant to Article XXII of the GATT. These consultations wore held on October 3, 1980. The EEC continued to make every effort to "stonewall" a resolution of this matter.

The U.S. Wheat Flour Case Under the Subsidies Code

Our industry has recently been heartened by a decision by the Office of the U.S. Trade Representative, in conjunction with the U.S. Department of Agriculture and other members of the interagency Trade Policy Committee, to invoke the applicable provisions of the Subsidies Code in our case. On September 29, 1981, the United States requested formal consultations under Article 12 of the Subsidies Code. These consultations were held with the EEC on October 28, 1981. As with the prior consultations, there was no resolution of the matter.

Subsequently, the United States notified the subsidies Code Committee of its intention to move to the next phase of the dispute settlement procedures outlined in the Code. On November 9, 1981, the United States communicated to the Chairman of the Subsidies Code Committee its formal request to enter into conciliation pursuant to Article 13 of the Code. The thirty days provided in the Code for conciliation did not result in a successful resolution of the matter.

The Subsidies Code Committee met again on Monday, December 14, 1981 in Geneva to take up the matter of our case. Because of the EEC's failure to seriously enter into conciliation efforts, the United States formally requested the establishment of a panel pursuant to Article 17 of the Code. The panel has been constituted and it is understood that our case will be presented to the panel on February 25, 1982. Presentation of our case to the panel is long overdue, and we trust that there will be no further delays.

After six long years of repeated bilateral discussions and consultations, our industry is gratified to learn that at long last our government is taking a firm position with respect to the EEC's excessive subsidy practices and is utilizing the tools available to it to pursue the matter vigorously. Because the Subsidies Code procedures are new and untested, a

successful resolution of our case must be made the highest priority. Such a resolution will require a major effort on the part of our negotiators to seek the support and assistance of other Signatories to the Code who are sympathetic to our position. In addition, it will require the continuing watchful eye of this Committee to assure that the Subsidies Code procedures are determined to be a viable alternative to existing GATT procedures for successfully resolving disputes such as the wheat flour case.

Conclusion

The U.S. Wheat Flour Section 301 case provides this Committee with an excellent example of a case which was filed pursuant to section 301 of the Trade Act of 1974 and was originally the subject of consultations pursuant to Article XXII of the GATT. During the Multilateral Trade Negotiations, a new Subsidies Code was negotiated which was notable for the specific time limits set forth for resolving a subsidies case. However, it took nearly two years for the United States to announce its intentions to pursue a resolution of our case under the Code.

The members of our industry are hopeful that the Subsidies Code will prove to be a viable tool for challenging

practices such as the EEC's excessive wheat flour export subsidies. The United States must do everything possible to assure a successful resolution of this matter. It is important to our industry. It is equally important to numerous other agricultural industries which have filed more recent cases challenging the EEC's subsidies practices. The precedents to be set by our case are critical.

The EEC's subsidy practices have turned its Common Agricultural Policy into a Common Export Policy to the detriment of U.S. agricultural trade interests. The United States must insist that the EEC stop its trade distorting practices in the interest of sound international trade policy and the restoration of a healthy U.S. balance of payments.

Respectfully submitted,

Wayne E. Swegle

Wayne E. Swegle
President

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

SUN-DIAMOND GROWERS OF CALIFORNIA

SUMMARY OF PRINCIPAL POINTS

Sun-Diamond Growers of California are currently involved in a section 301 case against the European Economic Community (EEC), in an effort to eliminate EEC production subsidies on Greek raisins which were first granted in August of 1981. The subsidization scheme, together with other forms of government aid, allow the Greek raisin industry to significantly undersell the U.S. industry. As a consequence, U.S. exports of raisins to the EEC have dropped approximately 60 percent since the EEC raisin subsidies were introduced. As the United States and other nonmember suppliers are forced out of the EEC markets, competition in third country markets will inevitably intensify. Given the significant trade losses already documented by our industry, it is essential that U.S. officials aggressively pursue a remedy through the Section 301 and GATT procedures.

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

STATEMENT OF
SUN-DIAMOND GROWERS OF CALIFORNIA

This statement is submitted by Sun-Diamond Growers of California in response to the Subcommittee's announcement that a hearing will be held to review the operation of Section 301 of the Trade Act of 1974 and the implementation of the Subsidies Code. Our testimony will address the deleterious effects of EEC raisin subsidies on American raisin producers and the use of Section 301 to oppose these EEC practices.

Sun-Diamond is a federated cooperative composed of Sun-Maid Growers of California, Sunsweet Growers, Inc. and Diamond Walnut Growers, Inc. It represents over 5,500 California farmers of raisins, prunes and walnuts.

THE EUROPEAN BARRIER

American raisin producers depend heavily on foreign trade which is free from artificial market restraints imposed by importing countries. Today, we are particularly concerned about restrictive subsidies established by members of the European Economic Community (EEC). American producers shipped 36 percent of total 1980 exports to the EEC, with an estimated value exceeding $41 million. The EEC's subsidies are intended to stimulate the production of raisins in Greece, a new EEC entrant, at the expense of non-EEC suppliers such as the United States.

Sales of American raisins to the EEC are severely inhibited through recently-imposed programs that allow Greek raisins (sultanas) to be sold in EEC markets at prices substantially below their actual cost. The practices used to destroy American export markets include:

1. subsidies provided to processors that permit the selling of Greek raisins at prices far less than those offered by third country suppliers;
2. provision of "free" credit which is passed on to the trade;
3. special storage allowances;
4. special export incentive programs; and
5. protective import tariffs on American raisins, while Greece enjoys a preferential duty on exports to EEC countries.

Today, for example, the costs of American raisins delivered, duty paid, to Hamburg, Germany, is approximately 96 cents per pound. However, we face unfair competition from Greek raisins which may be purchased at a subsidized price of 43 cents per pound, or less. Even at this lower price, the EEC subsidy guarantees Greek farmers a better price than that received by their American counterparts.

We cannot compete against a commodity priced at less than one-half our direct costs of production -- ignoring our significant overhead costs which are not even included in the 96 cent per pound figure. Sales to the EEC are down by over 60 percent for the first four months of the 1981 crop year -- the period since the EEC subsidy program was imposed. Sales to Germany are off by 71 percent for this same period; exports to France and the United Kingdom have been reduced by over 60 percent. And, these dire trend data do not tell the whole story. Remaining export sales involve obligations under old contracts; no new contracts are being executed for the sale of American raisins to the EEC.

The EEC raisin subsidies also destroy export markets for other nonmember producer countries, such as Australia and South Africa. This serves to heighten competition in other markets such as Canada and Japan.

Thus, American producers face a true dilemna. We cannot cut our prices to compete with subsidized foreign competition and still hope to survive. Yet, American raisin producers are unique in foreign markets because they are not protected by subsidy support programs and a host of other aids such as unreasonable tariff and nontariff trade barriers, government paid incentive programs, storage aid and free government credit. Our only hope is a firm commitment by the American government to pursue free trade policies and to take actions necessary to encourage foreign governments to abide by their international obligations.

THE AMERICAN PRODUCERS' RESPONSE TO THE IMPORT BARRIER

On October 23, 1981, Sun-Diamond Growers of California joined with the California Raisin Advisory Board in petitioning the United States Trade Representative under Section 301 of the Trade Act of 1974, to take all action within his power to eliminate the EEC raisin subsidy program. Also, joining in the petition were representatives of the American canned peach and pear industry, who have also been subjected to EEC discriminatory trade practices.

In preparing our petition, we were frustrated by the government's insistence that detailed evidence be submitted in

our initial filing. This insistence tends to discourage the pursuit of a 301 case and calls into question the purpose of the hearing provided for in Section 301. The emphasis on detail is prompted by the statutory requirement under 19 U.S.C. 2413 that the United States must request consultations with the concerned foreign governments regarding the issues raised in the 301 petition on the day the petition is accepted. We urge this Committee to consider an amendment that would require notification at some point after the 301 hearing. This would give the industry an opportunity to place its complete case in the record, and would allow the government to make a meaningful evaluation of each case before consultations are requested.

On December 10, 1981, the U.S. Trade Representative agreed to accept our case. A hearing was held by the 301 Committee on January 6, 1982 to investigate the complaints raised in the petition. It is our understanding that consultations under Article XXIII:1 of the General Agreement on Tariffs and Trade (GATT) have been scheduled for February 23, 1982.

It is essential to the domestic raisin industry that this case proceed quickly through the prescribed procedures of the GATT. We have already documented very significant losses

in export markets and we anticipate additional market erosion. No further demonstration of injury to domestic producers should be required before the U.S. Trade Representative undertakes efforts necessary to attain a full and effective remedy. We seek the support of this Subcommittee in assuring that the U.S. Trade Representative aggressively pursues a remedy on behalf of this important segment of American agriculture.

Respectfully submitted,

Frank R. Light
President

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

CLING PEACH ADVISORY BOARD

SUMMARY OF PRINCIPAL POINTS

The Cling Peach Advisory Board has experienced the Section 301 process in the context of both the 1975 challenge to EEC minimum import prices, and the ongoing canned peach, canned pear and raisin 301 case against EEC subsidy practices.

The section 301 challenge against the EEC's proposed import restrictions on processed fruits and vegetables was instituted in the fall of 1975, and a successful resolution was reached in 1978. This case demonstrates that such procedures can successfully resolve world trade disputes. At the same time, it emphasizes the slowness with which trade disputes are resolved.

The pending canned peach, canned pear and raisin 301 case illustrates the importance of immediate action by U.S. officials in the face of a GATT violation by our trading partners. We believe that Section 301 procedures can work in this case if international trade laws and the interest of our industry are aggressively protected by the U.S. government.

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

STATEMENT OF
CLING PEACH ADVISORY BOARD

Introduction

This statement is submitted on behalf of the Cling Peach Advisory Board in response to the Subcommittee's announcement that a hearing will be held to review the effectiveness of Section 301 and the Subsidies Code. Our testimony will emphasize the strengths and weaknesses of the Section 301 process in the context of both the 1975 challenge to EEC minimum import prices, and the canned peach, canned pear, and raisin 301 case recently accepted by the Office of the United States Trade Representative (USTR).

The Cling Peach Advisory Board is organized pursuant to California statute and represents all peach producers and marketers in the state of California. Because the Board represents an industry that exports significant quantities of canned peaches and fruit cocktail, its interest in U.S. trade policy is strong.

California produces 100 percent of the nation's cling peach supply. Approximately 72 percent of the cling peach crop is packed as canned peaches, another 25 percent is used in canned fruit mixtures, and the remaining portion is packed as baby food, puree or concentrate. The farm value of the total cling peach production was approximately $130 million in 1980. The total finished product value of the peach and fruit cocktail pack is over $450 million.

Canned peaches and fruit mixtures make a major contribution to California's export trade. in the 1980 crop year, canned peaches and fruit cocktail ranked as the tenth leading export from California, with an export value in excess of $90 million.

Prior to the formation of the EEC, the United States was the leading third country supplier of canned peaches and fruit cocktail to the EEC. Today, however, this country's share of the EEC's market is seriously threatened by excessive EEC subsidies. Section 301 has been invoked, as it has been in previous years when EEC practices have threatened U.S. cling peach exports, in an effort to remove this threat and to preserve the EEC as a significant export outlet. Our testimony will set forth our prior experiences with the applicable procedures, as well as our current interest in Section 301 and the GATT.

Section 301: Challenge to Minimum Import Prices

The Cling Peach Advisory Board's first Section 301 challenge against the EEC occurred in 1975, when it opposed the EEC's existing and proposed import restrictions on processed fruits and vegetables. In the fall of 1975, the United States informed the GATT Council that it had entered into Article XXIII:1 consultations with the EEC. Consultations held in March of 1977 failed to achieve a satisfactory resolution. It was not until the fall of 1977 that the United States referred this matter to the Contracting Parties and sought the formation of a panel pursuant to Article XXIII:2. The panel, after much delay, successfully resolved this matter in the fall of 1978.

The described chronology of events highlights both a strength and weakness in the Section 301 and GATT procedures. Although it demonstrates that such procedures can successfully resolve world trade disputes, it emphasizes, too, the slowness with which panels are formed and issues are resolved. Because the domestic industry suffers growing damage while a trade dispute is outstanding, it is critical for U.S. officials to use the flexibility provided under Article XXIII to vigorously press complaints in the GATT toward a swift resolution.

Section 301: Current Challenge to Processor Subsidies

The need for swift and immediate action by U.S. officials exists again today in the face of actions taken by the EEC in 1978, 1979, and 1981, when it introduced production subsidies on canned peaches, canned pears, and raisins, respectively.

Although the stated aim of these subsidies is to make EEC products competitive with those of third countries, the established subsidies far exceed the levels needed for their intended purpose. The subsidization scheme allows EEC growers and producers to significantly undersell their third country counterparts. In 1980, for example, canned peaches imported into Germany from the U.S., South Africa and Australia had an average price 47% higher than that for canned peaches imported from the EEC.

As a consequence of these excessive subsidies, the volume of U.S. trade in canned peaches has decreased substantially, dropping by 58 percent since the subsidies were imposed. U.S. exports of canned pears and fruit cocktail have also decreased since the establishment of the subsidy system. Over a period of time, shipments of these commodities to the EEC may be eliminated altogether. At the same time, the United States will face intensified competition in third country markets from other competing suppliers.

The United States has previously consulted with the EEC on its subsidy practices as they relate to canned fruits, but without satisfactory resolution. In 1978, bilateral discussions were held between the United States and the EEC, during which the United States urged restraint in establishing production subsidies for canned peaches. Following those consultations, the Community imposed subsidies at levels higher than that initially proposed. Recently, the United States requested that further consultations be held with the EEC in conjunction with Australia's request for Article XXIII consultations. That request was refused by the EEC.

Because of the need for immediate relief from the EEC's subsidy system, the Cling Peach Advisory Board joined with several other parties in October of this year to file a 301 petition, requesting that this matter be pursued under Article XXIII:1 of the GATT. Other petitioning parties included the California League of Food Processors, Sun-Diamond Growers of California, the Northwest Horticultural Council, the California Canning Pear Association, the California Canning Peach Association, the Processing Pear Program Committee, and the California Raisin Advisory Board.

Initially, the interagency 301 Committee expressed reluctance to accept the petition on the grounds that injury to the industry had not been established in sufficient detail.

This reluctance, if it reflects an institutional policy, threatens to reduce the GATT to an ineffective and meaningless tool. The GATT is of little use if protection is only forthcoming after serious and perhaps irreparable injury has been caused to U.S. industry. To adequately protect our domestic industry, any breach of GATT rules must be assumed to have an adverse effect on a complaining party, whether or not injury has been shown.

Furthermore, the regulations, as currently written, do not require that all petitioners provide a detailed showing of injury. Rather, evidence of injury need only be provided by the petitioner "to the extent possible", 15 C.F.R. 2006.1(f). This established requirement is appropriate for as in any judicial context,a party should not be required to try the case in his initial complaint.

Unfortunately, 19 U.S.C. 2413 requires the United States to request consultations with the concerned foreign governments regarding the issues raised in the 301 petition on the day the petition is accepted. Confronted with this task, U.S. officials are inclined to erect legal requirements for filing 301 cases. This Committee may wish to consider amending the law to require notification after, rather than before, the 301 hearing. Such an amendment would allow the affected

industry the opportunity to place its complete case in the record, so that a meaningful evaluation of each case may be made.

Our 301 case was accepted by the USTR on December 10, 1981, and on January 6, 1982, a hearing was held by the 301 Committee to investigate the complaints made in the petition. It is our understanding that Article XXIII:1 consultations have been scheduled in this case for February 23, 1982.

We are heartened by these actions, in light of our previous favorable experience with Article XXIII procedures. However, the success of this case, and indeed the economic well-being of all U.S. industries involved, depends on how forcefully our own government will push the case in the GATT. Because Article XXIII provides no time limits, our negotiators can press the case forward with all due haste.

Conclusion

Ambassador Brock, Secretary Block and other top U.S. officials have publicly articulated the need for a strong and consistent trade policy relating to agriculture. We heartily support their position. Nowhere is this need more apparent than in the Section 301 and GATT procedures. Experience has taught us that these procedures can work, but their efficacy depends heavily on aggressive support by our government. We seek this Committee's help in assuring that such support is provided.

Respectfully submitted,

W. R. Hoard

W. R. Hoard
Manager

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE

HEARINGS ON SECTION 301 AND THE SUBSIDIES CODE

STATEMENT OF
CALIFORNIA-ARIZONA CITRUS LEAGUE

The California-Arizona Citrus League (the League) is a voluntary nonprofit trade association composed of marketeres of California and Arizona citrus fruits. Members are farmer cooperatives and independent shippers which represnt over 75% of the 10,500 citrus fruit growers in Arizona and California. These growers produce oranges, lemons, grapefruit, tangerines and limes. Their fruit is marketed in both fresh and processed forms.

The League speaks on behalf of the California-Arizona citrus fruit industry on matters of general concern such as legislative, foreign trade and other similar topics. Representatives of the League have devoted much time, effort and expense in the promotion and export of California-Arizona citrus fruit and have concerned themselves with international trade problems since early in the 1920's.

CALIFORNIA-ARIZONA CITRUS LEAGUE

SUMMARY OF PRINCIPAL POINTS

The California-Arizona Citrus League is currently involved in the oldest outstanding trade dispute subject to a Section 301 complaint. This case, filed in opposition to the discriminatory tariff preferences granted by the EEC to certain Mediterranean countries, should serve to measure the effectiveness of our trade negotiators and trade laws. The case will disclose, first, the resolve on the part of the Administration to correct an undisputed violation of GATT law, whether or not statistical evidence of damage is available. It will demonstrate, too, the commitment of U.S. officials to multilateral solutions to trade disputes, rather than to secret bilateral agreements. Finally, it will show whether or not procedural delays and the passage of time weaken U.S. resolve to upholding basic concepts of international law.

The League appreciates the opportunity to appear before the Subcommittee on International Trade to share its views and experiences regarding Section 301 of the Trade Act (19 U.S.C. 2411) and the accompanying procedures under the General Agreement on Tariffs and Trade (GATT).

We thank the members of this Committee not only for holding this important hearing, but also for the attention they have given to problems involving citrus exports. To be adequately resolved, these trade problems require close Congressional involvement.

As this Committee knows, the California-Arizona Citrus League filed the first petition ever filed under Section 252, which was the predecessor of Section 301. The petition complained against the damaging discriminatory tariff preferences granted by the European Economic Community to certain Mediterranean countries. Those preferences remain in effect today and are the subject of a current Section 301 case brought by the California-Arizona Citrus League, Texas Citrus Mutual, Texas Citrus Exchange and Florida citrus producers and processors. This is the oldest outstanding trade dispute subject to a Section 301 complaint.

The League urges this Committee to follow this case closely because it serves as a good example to measure the effectiveness of our trade negotiators and trade laws. In

several respects the importance of the case far exceeds the citrus commodities involved.

First, the manner in which this case is treated by the United States will disclose the resolve on the part of the Administration to correct trade problems. The EEC chose to violate Article I of GATT in 1969 when it extended its discriminatory tariff preferences to Mediterranean countries, while refusing to grant these benefits on a most favored nation basis. The discrimination has damaged numerous exporting countries, including the United States. As no one in this or any other Administration has ever disputed that the EEC's actions violate Article I of GATT, the United States must insist without further delay that the EEC return to nondiscriminatory rules of trade.

This case also serves to illustrate the method of handling trade disputes by the Administration. A clear violation of the GATT should be sufficient to allow an offended country to receive relief. Although the European Economic Community often argues that it is necessary to establish damage before prevailing in the GATT, this is an argument that the United States must be careful not to accept. If the United States were to accept that argument, then GATT would be nothing more than a place to administer the estates of deceased traders. It often takes years before damage can be established statistically, and in some instances, it is never possible to

establish such damage. Because any requirement of damage would seriously restrict U.S. trade disputes, this Administration must not view it as a necessity for succeeding in GATT.

In addition, the citrus 301 case will allow this Committee to determine the manner in which trade laws are administered by U.S. Officials. The United States has always favored a multilateral solution to trade disputes, as is reflected by the establishment of GATT. However, from time to time, there are rumors that the United States has entered into various secret bilateral agreements affecting GATT rights. Indeed, such rumors have surfaced respecting the pending citrus case. Research by the California-Arizona Citrus League finds no such agreement reported to Congress and none ratified by the Senate. Therefore, it seems reasonable to assume that the United States has not entered into any secret agreement. The Committee may wish to investigate this matter more fully.

The citrus 301 case should be followed closely for yet another reason. Some argue that because the case is ten years old, patterns of trade have been established and nothing can be done. That position accepts the EEC's view that if the Europeans can stall a matter long enough, the United States will lose its resolve and give up. U.S. officials should not allow the EEC to benefit from calculated delay.

The Trade Policy Committee has recently determined to take the citrus case forward to Article XXIII of GATT, although consultations under Article XXIII:1 have not yet been requested. This Committee must watch closely to assure that the United States goes forward on the basis of Article I of GATT. If the Administration were to go forward on any other basis it would be a clear signal to Congress that the Administration no longer considers the most favored nation principal to control U.S. trade policy. It would also be a clear signal that the Administration has determined to go forward on less than its strongest argument, a determination that would only be understandable if there were a secret agreement involved. If such were the case, then this Committee would undoubtedly wish to be fully aware of the agreement and expose the matter on the public record.

If GATT is to work, then the United States must assume the leadership to see that it does. It must take cases forward through the dispute settlement process. Not all cases will be won, but most should be successful if they are based upon a violation of GATT rules. Only if the Administration prosecutes 301 cases in an aggressive and timely fashion, will Congress have an accurate basis to measure whether or not our trading partners are interested in workable international trade rules.

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If our trading partners are not, then the United States will be able to respond accordingly.

Almost ten years ago the Honorable Peter G. Peterson, in his report to the President, discussed the need to preserve nondiscrimination in foreign trade. In his report to the President, he stated at page 20:

> "The United States has long supported the multilateral, nondiscriminatory approach to the management of international economic relations, as opposed to bilateralism and discrimination. The United States has global economic interests: it thrives best in a world of nondiscrimination. The American interest is not solely economic, however. Nationalism is politically divisive, whether practiced militarily or economically. The United States has tried to encourage the development of an international system which would contain divisive economic nationalism and exclusive regionalism, so that political as well as economic relations might operate to the general benefit of all countries. "

As this Committee watches in the coming weeks what the Administration does to assist citrus growers in Florida, Texas, Arizona and California in obtaining equal treatment from the EEC, it will be able to measure the commitment of the United States to pursue an effective trade policy. The Committee's attention and time is very much appreciated.

The California-Arizona Citrus League will be pleased to respond to any questions that this Committee may have.

Respectfully submitted,

William K. Quarles

William K. Quarles, Jr.
President

Senator DANFORTH. Thank you, sir.
Mr. Sandstrom, if you would proceed.

STATEMENT OF MARK R. SANDSTROM, THOMPSON, HINE & FLORY, REPRESENTING THE GREAT WESTERN SUGAR CO.

Mr. SANDSTROM. Thank you, Mr. Chairman.

My name is Mark Sandstrom. I am a member of the law firm of Thompson, Hine & Flory, and counsel for the Great Western Sugar Co. On behalf of Great Western, we have filed a section 301 petition against the subsidized sugar exports of the European Community under its common agricultural policy.

I will try to summarize my statement this morning, and I would ask that my written statement be included in full in the record.

In its section 301 petition, Great Western alleges that the European Community's regime of subsidization of sugar exports is a violation of articles 8 and 10 of the GATT subsidies code, and otherwise burdens U.S. commerce.

The EC's subsidized exportation of sugar has brought about significant losses in U.S. export sales of sugar, and in addition has significantly depressed the price at which U.S. domestic producers are able to sell their sugar in the U.S. market.

We have estimated that the EC export subsidies resulted in a revenue loss of approximately $2.1 billion in 1981 alone.

Through a system of high internal support prices, the EC has created generous incentives for the domestic production of sugar. Support prices are well above the cost of production.

Prior to 1975, the Community was a net importer of sugar. However, since that time the Community has grown to be the largest single exporter of sugar in the world market. In 1981, the Community exported over 4 million tons of sugar, accounting for one-fifth of the total trade in exported sugar.

EC's policy is unconscionable, we believe, not only because it generates surpluses of sugar, but also because the EC has thrust the burden of its support program on all producers throughout the world. Rather than hold excess stocks, particularly during periods of falling world prices, the Community has undertaken a direct and deliberate policy of subsidizing its exports to whatever extent is necessary to insure that all excess sugar is dumped on foreign markets. In periods of excess world supply this policy has disastrous effects on the world market prices.

Most other sugar exporting countries are members of the International Sugar Agreement, and as such they take steps to establish stocks and limit sugar exports to the free market during periods of falling prices. The EC, which has consistently refused to join the ISA, not only does not limit its exports but, in fact, forces the exportation of large quantities of sugar with the use of massive subsidies.

Unfortunately, the EC's policy, if anything, is getting worse. This year's crop will leave approximately 6.8 million tons of sugar available for export. Moreover, the proposed support price for sugar for the 1982–83 crop, which would begin to be planted this spring, would provide an increase of 10.5 percent higher than the increase of support for any other commodity.

The United States and other sugar producing countries must make it clear that the EC progam cannot continue in its present form.

As you are aware, any section 301 case depends not only on its economic and legal merits, but also the political commitment of the United States to take action should the other party not agree to resolve the matter in dispute.

We applaud the convening of this hearing by your subcommittee and we hope that it will enable you to send a clear message to the Community that it must take steps to either reduce production to the level of domestic needs, or otherwise insulate the world sugar market from its sugar regime.

The primary issue which the subcommittee has asked witnesses to address today is the effectiveness of section 301 in enforcing U.S. trade agreement rights. I see my time has almost run out, so I will be brief.

As you are aware, section 301 was drafted so that the time limits thereunder would mesh with the time limits established under the GATT's subsidies code dispute settlement mechanism. In that code, it is contemplated that consultations following a request therefor would be completed within 60 days.

The United States, in connection with this 301 petition, requested consultation with the Community on October 5 of this year. As of today, the EC has refused to consult with the United States. This is 4 months after the requests for consultation began. We believe it shows a deliberate disregard by the Community for the requirements of a code to which it agreed. More importantly, this delay also makes it impossible for the USTR to make its recommendation to the President within the 8-month time limit required under section 301.

I hear the buzzer for a vote on the floor.

Senator DANFORTH. Have you finished.

Mr. SANDSTROM. Basically, these are the main points which I intended to raise today. My written statement covers these and some additional issues in more detail.

[The written statement of Mr. Sandstrom follows:]

Summary of Testimony of The Great Western Sugar Company
Before the Subcommittee on International Trade

The following are the principal points contained in the testimony of Mark R. Sandstrom, counsel for The Great Western Sugar Company:

1. Upon the acceptance of The Great Western Sugar Company's Section 301 Petition regarding sugar export subsidies by the EC on October 5, 1981, the U.S. requested immediate consultations with the EC. However, the EC delayed for over four months the initiation of consultations even though it is bound to respond "as quickly as possible" under the Subsidies Code. This delay will make it virtually impossible for the United States Trade Representative to fulfill the timing requirements established by Congress for Section 301 proceedings.

2. Subsidies paid by the EC under its Common Agricultural Policy for sugar have had an extremely deleterious effect on the volume of and prices paid for U.S. produced sugar. Although the EC was a net importer of sugar through 1975, as a result of its highly aggressive price support and export subsidy program, the EC is now the largest supplier of sugar to the freely traded world market. In 1981 alone, it is estimated that U.S. sugar producers lost approximately 2.1 billion dollars in sugar revenues in their domestic and export sales as a result of the EC sugar export subsidy program. This year's EC crop will leave [redacted] million tons of domestic surplus sugar available for export, a factor which has already ruined sugar prices in 1982. The EC is now planning to raise the support price for the 1982/3 sugar crop by 10.5%, higher than for any other EC commodity.

3. The third issue to be addressed is the meaning of Article 10 of the Subsidies Code. The concept of a "more than equitable share of world export trade" as contained in Article 10 must include those situations where a country has established a significant share of world export trade as a result of policies which compensate for that country's basic economic inability to compete in world markets. Further, the Subsidies Code must be interpreted to deal not only with the displacement of export sales as a result of export subsidies paid by a foreign country, but also the indirect effect on domestic prices that result when export subsidies cause a depression in world market prices.

Mr. Chairman, Members of the Subcommittee, my name is Mark Sandstrom. I am a partner in the law firm of Thompson, Hine and Flory and counsel for The Great Western Sugar Company of Denver, Colorado. I appreciate the opportunity to appear before you today to discuss the operation of Section 301 of the Trade Act of 1974 and the implementation of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade.

I have a certain professional interest in the operation of Section 301 since I was involved in the drafting of the original legislation both as an attorney for the administration in 1973 and as a member of the staff of the Senate Finance Committee in 1974. However, I have an even greater interest in the operation of Section 301 and its relationship to the Subsidies Code and the EC Common Agricultural Policy in my capacity as counsel for Great Western which is presently pursuing a Section 301 proceeding concerning EC sugar export subsidies.

In my testimony today I wish to address the following issues suggested by the Subcommittee:

1. The effectiveness of Section 301 in enforcing the trade agreement rights of the United States and responding to foreign practices that are inconsistent with trade agreement provisions or unjustifiably burden or restrict U.S. commerce;

2. The effect of subsidies paid under the Common Agricultural Policy of the EC on the volume of and prices paid for U.S. agricultural products; and

3. The meaning of Article 10 of the Subsidies Code.

However, rather than addressing each of these issues in the abstract, I wish to consider these questions in the context of the ongoing Section 301 investigation relating to EC sugar export subsidies. Let me begin by providing a brief explanation of the current Section 301 proceeding involving EC subsidies on exported sugar.

On August 19, 1981, The Great Western Sugar Company filed a Petition pursuant to Section 301 with the Office of the United States Special Representative regarding the EC practice of providing substantial subsidies on exported sugar under the EC's Common Agricultural Policy. Specifically, the Petition filed by Great Western alleges that the EC sugar export subsidies deny the United States certain rights under Articles 8 and 10 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the Subsidies Code. In addition, the Petition alleges that the sugar export subsidy program constitutes an unreasonable and unjustifiable burden upon U.S. commerce.

The EC first established a CAP for sugar by regulation which went into effect on July 1, 1968. Traditionally a net

sugar importer, the EC in 1975 implemented a completely revised CAP for sugar in a deliberate effort to expand its sugar production. The 1975 CAP gave EC producers tremendous economic incentives to increase production by guaranteeing them that all sugar produced within a large production quota would be sold at a high price. In addition, the EC established a policy of exporting all sugar in excess of domestic needs instead of purchasing and storing it under its existing intervention program. Since the world price for sugar has almost always been below the EC internal price, the EC paid its producers export subsidies so they could sell the surplus sugar abroad at the low world price, but still receive the higher internal price. On July 1, 1981 the EC adopted a new basic sugar regulation which increases the production quotas and the support prices and continues to place no limit on the volums of export sales or the subsidies necessary to achieve those sales. The new program will clearly increase the amount of sugar available for export.

Later in my testimony, I will discuss, in detail, the economic consequences of the EC sugar export subsidies program. Suffice it to say that the sugar CAP has resulted in the Common Market going from a net sugar importer in 1975 to a dominant exporter of sugar in 1981. Indeed, the EC presently supplies over 20% of the sugar which is traded on a freely competitive basis in the world sugar market. The

staggering growth of EC sugar exports has not only displaced sugar exports from the United States, but has also significantly depressed world market prices for sugar. Since the U.S. market price for sugar is directly affected by the world market price, U.S. producers have incurred substantial revenue losses in sugar sales in the United States. Indeed, it is presently estimated that U.S. sugar producers lost $2.1 billion in revenue on sales in the United States in 1981 as a direct result of depressed world market prices caused by the EC sugar subsidies program.

Effectiveness of Section 301 in Enforcing U.S. Trade Agreement Rights

The first issue that I would like to address this morning is the effectiveness of Section 301 in enforcing the trade agreement rights of the United States and responding to foreign practices that are inconsistent with trade agreement provisions or unjustifiably burden or restrict U.S. commerce.

The Section 301 Petition filed by Great Western was accepted by the Special Representative on October 5, 1981. On the date of the acceptance of the Petition, as required by Section 303 of the Trade Act of 1974, the Special Representative immediately requested consultations with the EC regarding the issues raised in the Great Western Petition. Unfortunately, the EC has engaged in various tactics designed to delay the

consultations. The effect of these delaying tactics has been to make it virtually impossible for the Special Representative to comply with the time periods prescribed by Congress in the Trade Act of 1974 as amended. Pursuant to Section 304 of the Trade Act of 1974, the Special Representative is obligated to recommend appropriate action to the President within eight months after the date of initiation of the investigation. By my calculations, this eight month period terminates on or about June 5, 1982. Incredibly, however, the EC did not agree to the consultation process until quite recently and the consultation will not even commence until February 16, of this year. Obviously, the delaying tactics used by the EC totally frustrate the timing established by Congress for Section 301 proceedings.

The delaying tactics employed by the EC are particularly galling in light of the following facts: first, under Article 12(5) of the Subsidies Code, the country to whom a request for consultation is made is required to enter into such consultation with the country making the request "as quickly as possible"; second, Article 13 of the Code specifies that the period for consultation shall run only 60 days from the date of the original request. Notwithstanding these clear requirements in the Subsidies Code for an early commencement of the consultation period, the EC, which is a signatory to the Subsidies Code, did not agree to the commencement of the

consultation period until four months from the time the United States Special Representative made the original request for consultation. As a result of the EC's delay, it will be impossible to mesh the time periods prescribed by Congress for Section 301 proceedings with those established under the GATT Subsidies Code, as was intended by Congress in the drafting of Section 301.

As I am sure this Subcommittee is well aware, the United States made a number of significant concessions of its own as part of the negotiations leading to the new Subsidies Code adopted in Geneva during the Tokyo Round. Not the least of these concessions was the addition of an injury standard in the U.S. countervailing duty law. The U.S. agreed to its concessions with the understanding that the new Subsidies Code would establish stricter standards with respect to export subsidies and procedures for settlement of disputes, including specific time limits for the resolution of such disputes. Yet, in one of the very first cases that has ever been brought under the Subsidies Code, the European Community flagrantly delayed setting a date for consultations as required under the Code.

Great Western is concerned about the status of this case because its Section 301 Petition has not, as yet, begun the process which will hopefully lead to a resolution of the problem. This Committee should be concerned about the status of this case because the international agreement and dispute settlement

mechanism to which the United States agreed has basically been ignored by the EC. If the Community continues its current policy in this case and in the other Section 301 cases which have been recently filed against it, the whole dispute settlement mechanism and the GATT Subsidies Code as well could be in jeopardy. If the Code proves ineffective, international dispute settlement could give way to unilateral protective actions on the part of trading nations. Such a result would not be in the best interests of this country or of our other trading partners.

Obviously, it is necessary for the United States to develop a method for assuring that the Section 301 procedures cannot be circumvented by foreign countries merely by delaying consultation. Thus, in this specific respect, there would appear to be a deficiency in the present operation of Section 301.

The Effect of Subsidies Paid under CAP on the Volume and Prices Paid for Sugar Produced in The United States

The second issue which I would like to discuss today is the effect of the CAP and the subsidies paid thereunder on the volume and price paid for U.S. sugar. As the following discussion demonstrates, the EC sugar regime has significantly and unfairly depressed the price, and reduced the volume of sugar sold, both within the United States and abroad.

The EC sugar crop for 1981/82 is estimated to be 15.5 million metric tons, raw basis. This year's crop is about 19 percent greater than last year's major crop, and 26 percent greater than EC's five-year average. See Table 1 on EC sugar available for export. Even so, these figures vastly understate the impact of EC policies on U.S. producers. The world sugar price is depressed today because world production is expected to exceed world consumption by about 4.1 percent or 3.8 mmt (raw basis), according to USDA. However, the EC will have 6.8 mmt available for export from the 1981/82 crop. Absent a change in their policies, they can be expected to subsidize directly the sale of 3.7 million tons (A and B Quota) -- about 97 percent of the world surplus. In addition, they will have another 2.9 mmt of "C" sugar from the 1981/82 crop which must be exported, with the benefit of the indirect subsidy accorded EC producers by the high guaranteed price on A and B Quota sugar, plus some 210,000 tons of sugar not eligible for export subsidies, which they may, but are not required, to export. The impact of these amounts of sugar on world markets and on U.S. producers can be expected to be immense. In that connection, I would like to comment very briefly on five points:

1. The EC has nc advantage in sugar production. They are the world's second largest exporter solely because of a

TABLE 1

The amounts the EC has available for export from the 1981/82 crop are dramatically greater than in earlier years:

	1975/76	1980/81	1981/82
	----1,000 tons, raw value---		
Available for Export	1,656	4,586	6,810
Eligible for Subsidy	1,499	3,132	3,722

Background data:

	1975/76		
	Total	A&B	C Sugar
	--1,000 tons, raw value--		
Production	10,433	10,314	119
Imports	1,688	1,438	
Total Supply	11,909	11,752	
Consumption	10,253	10,253	
Available for Export	1,656	1,499	

	1980/81		
	Total	A&B	C Sugar
	--1,000 tons, raw value--		
Production	13,025	11,762	1,262
Imports	1,561	1,370	
Total Supply	14,586	13,132	
Consumption	10,000	10,000	
Available for Export	4,586	3,132	

	1981/82		
	Total	A&B	C Sugar
	--1,000 tons, raw value--		
Production	15,520	12,642	~~2,878~~ 2878
Imports	1,610	1,400	
Total Supply	17,130	14,042	
Consumption	10,320	10,320	
Available for Export	6,810	3,722	

(Note: data was converted from white sugar equivalent as reported by S. & W. Berisford for the 1975/76 and 1980/81 crop years. The data for 1981/82 are S. A. Harris estimates of October, 1981 and Czarnikow estimate of February 5, 1982.)

conscious policy of very high internal price supports -- about 24.75 cents per pound, refined basis for 1981/82 crop sugar. The support level is expected to increase 10.5 percent to 27.35 cents for the 1982/83 crop.[1/] This high internal price guarantee is protected by an even higher "threshold" price -- the minimum for imported sugar -- of 28.66 cents per pound for the 1981/82 crop year.

2. The EC policy of high internal support prices has stimulated a spectacular increase in production. The EC had a negative total balance of trade for sugar averaging 1.4 million tons per year between 1960 and 1975. During the early 1970's their exports accounted for an average of 3 percent of the world free market trade.[2/] By 1981 that share was 20.9 percent. See Table 2 on the EC trade balance.

3. The EC could have achieved self-sufficiency and maintained that position at far less cost to EC consumers and member governments by reducing quotas, by increasing stocks when

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1/ S. and W. Berisford, January 21, 1982 report on January 18 meeting of the European Commission.
Based on an estimated conversion rate of $1.08 per ECU; 1981/82 effective support level of 50.50 ECU/100 kg; 1981/82 threshold price of 58.51 ECU/100 kg; and expected 1982/83 effective support level of 55.78 ECU/100 kg as estimated by Berisford.

2/ The world "free" sugar market is defined as that sugar traded free of any special arrangements; sugar traded where the price is determined by competitive negotiations. This thus excludes trade under special or preferential arrangements, such as the USSR-Cuba trade, the EC-Africa, Caribbean, and Pacific trade, etc.

TABLE 2

EC Sugar Trade: Total Trade and "Free" Market Trade

Year	Total Exports	Total Imports	Net Balance of Total Trade	Net Balance of Free Market Trade	Percent of Free Market Net Exports
	thousand tons, raw value				
1960	1,929	3,738	-1,809	n/a	n/a
1961	1,908	3,185	-1,277	"	"
1962	1,729	3,188	-1,459	"	"
1963	2,086	4,195	-2,109	"	"
1964	1,873	3,797	-1,924	"	"
1965	1,901	3,572	-1,671	"	"
1966	989	2,862	-1,873	"	"
1967	896	2,964	-2,068	-289	"
1968	1,372	2,525	-1,153	628	"
1969	808	2,508	-1,700	72	"
1970	1,179	2,221	-1,042	143	1.0
1971	1,288	2,297	-1,009	80	0.6
1972	1,920	2,294	- 374	809	4.9
1973	1,916	2,228	- 313	780	4.7
1974	1,128	2,164	-1,037	138	0.8
1975	702	2,154	-1,452	-183	-
1976	1,869	2,078	- 209	1,174	7.5
1977	2,699	1,733	966	2,310	11.1
1978	3,566	1,656	1,910	3,321	19.0
1979	3,377	1,475	2,102	3,388	18.5
1980	4,325	1,431	2,894	4,233	21.7
1981 (f)	4,800	1,500	3,300	4,300	20.9

(f) = forecast

Source: ISO Yearbook, F.O. Licht.

Note: "Free market trade is that sugar which is traded outside of special agreements, i.e., net exports to the free market means the total arrived at by adding together each country's net exports after deducting its net exports, if any, under special arrangements.

production exceeds consumption, and by establishing somewhat lower incentives for production. Instead, it has maintained high internal prices, continued to stimulate production, and marketed surplus sugar on depressed world markets when necessary, even though very large export subsidies are required.

4. Without an export subsidy program, the EC would have exported essentially no sugar during the last six years, the exception being during 1980 and early 1981 when world prices exceeded EC external prices. Their internal price supports prevent their competitive access to world markets, except when prices are exceptionally high. See Table 3 on EC's ability to compete in world markets.

5. EC subsidized sugar sales have a huge impact on U.S. sugar producers, partly because the amount the EC sells is so great and partly because world sugar prices are so sensitive to small changes in production and stocks.

World prices are sensitive because:

a) Of the basic nature of the sugar supply-demand relationship. Sugar faces a strong consumer preference and is mainly consumed in relatively small amounts either as a complement to or an ingredient to other foods. Per capita consumption tends to respond much more to income than to price. Prices, however, respond sharply to small changes in availability.

TABLE 3

Ability of the EC to Compete in World White Sugar Markets

Year	Paris Daily Price	EC Intervention Price*	EC Market Disadvantage	
	ECU per 100 kg.			c/lb.
		Crop Year		
1975/76	29.47	33.45	- 3.98	- 2.1
1976/77	19.85	36.14	-16.29	- 8.4
1977/78	13.55	37.60	-24.05	-13.1
1978/79	15.45	38.47	-23.02	-14.1
1979/80	32.32	46.27	-13.95	- 8.8
1980/81	48.80	49.16	- 0.36	- 0.2
		Calendar Year		
1980	51.05	47.72	3.34	2.1
1981				
Jan - Mar	55.20	49.16	6.04	3.8
Apr - Jun	39.99	49.16	- 9.17	- 5.0
Jul - Sep	36.64	53.50	-16.86	- 7.9
Oct - Dec	29.71	53.50	-23.79	- 11.7

* Intervention price F.O.B. Northern European ports, estimated to be the total of the EC intervention price, transportation cost (3 ECU), and the storage levy.

Scources: CAP Monitor, daily market reports and F.O. Licht.

b) The world market for sugar is "thin". Most is either consumed where produced, or traded under special arrangements. Of the more than 90 mmt consumed in 1981, only about 20.9 mmt was traded on "free" markets. Thus in any given year, small changes in world sugar availability can result in disproportionately large impacts on prices.

c) Both research and recent experience indicate that large world price responses can be expected from small changes in availability. Thus sugar sales in a depressed world market have a major negative impact. Each one-percent increase in the availability of surplus sugar would be expected to reduce world prices by at least three percent. 3/

Since 1960, world sugar prices have demonstrated their extreme volatility three times: in the 1962-1965 period, in the 1973-1976 period, and again in the

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3/ See, for example:

Jos de Vries. "The World Sugar Economy: An Econometric Analysis of Long-Term Developments", International Sugar Report, Vol. 112, No. 18, F.O. Licht, Ratzenburg, Germany, June 17, 1980.

Michael Hammig, Roger Conway, Hosein Shapouri, and John Yanagida. "The Effects of Shifts in Supply on the World Sugar Market", Unpublished Paper, U.S. Department of Agriculture, July 1981.

F. Gerard Adams. "An Econometric Analysis of the World Sugar Market", Paper prepared for the United Nations Conference on Trade and Development, University of Pennsylvania, October 1975.

Ezriel M. Brook and Danuta Nowicki. "Sugar: Econometric Forecasting Model of the World Sugar Economy", Commodity Note No. 10, The World Bank, Washington, D.C., March 1979.

1979-1981 period. The attached Table 4 shows the magnitude of those price swings. In each case, the pattern was strikingly similar. Production growth slackened or declined briefly; prices increased enormously; production responded, and prices subsequently collapsed.

The most recent example is the 1979-1980 period. World sugar production in 1980 fell from the 1979 amount of 89.2 mmt (raw basis) to 84.4 mmt, a 5.4 percent reduction. Sugar prices responded by rising from a 1979 season average of 9.65 cents per pound to 28.66 cents per pound for the 1980 season--almost three times the 1979 price.

6. Because the EC cannot produce competitively for world markets, the quantities of sugar they sell can reasonably be argued to be unnecessarily and unfairly depressing world sugar markets. That is because the EC sugar program promotes three important economic effects. First, it increases production far above the levels that would be forthcoming in the absence of the extremely high internal price structure (which is protected by very high import levies). Second, it decreases consumption by maintaining high consumer prices. These two effects combine to greatly increase the amount of

TABLE 4

Changes in World Production and Prices, Selected Years, 1960-1981

	1962-1965		1973-1976		1979-1981	
	1962&63	1963&64	1973&74	1975&76	1979&80	1981
	(percent change)					
Production Change:						
10 year trend*	+ 10.2	+ 6.6	+ 8.0	+ 5.0	+ 6.2	+ 1.6
Actual change	- 3.9	+ 16.2	+ 0.9	+ 7.9	- 6.9	+ 9.0
Actual from Trend	- 14.1	+ 9.6	- 7.1	+ 2.9	- 13.1	+ 7.4
Price Change	+203.0	- 75.8	+243.9	-61.2	+220.6	-41.4

* Production increase to maintain trend through each period.

sugar available for export from the EC. Finally, the EC systematically subsidizes the export of excess sugar i.e. production in excess of internal consumption. Without this regime and its high internal prices and export subsidies, the EC would almost certainly revert to its traditional role of an importer of sugar.

In mid-1981, an analysis was made of the impact of the 3.5 mmt of EC sugar expected to be marketed under subsidy during calendar 1981.[4/] The impact of the sale of such a large quantity of sugar on world markets where sugar was already in surplus was estimated to hold world refined sugar prices about 15.66 cents per pound below levels they would have been absent EC export subsidies. The damage to U.S. sugar and sweeteners producers from that price impact was estimated to be $2.998 billion. U.S. sugar producers sustained over $2.1 billion in losses, including the impact of the loss of export sales of 266,000 tons of refined sugar.

Current estimates for the past calendar year--1981-- are that EC subsidized sugar exports will turn out to be below the levels projected earlier in the year. They will be about 2.8 mmt

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4/ Impact of European Economic Community Sugar Subsidies on U.S. and World Sugar Markets, Economic Perspectives, Inc., McLean, Virginia, August 19, 1981.

(refined basis) or .7 mmt short of the August projection. However, there can be no question but that world and U.S. prices were severely damaged by EC sugar sales. Raw sugar prices during the last quarter of 1981 averaged 12.33 cents per pound, raw value, Caribbean basis--more than 7.5 cents per pound below the levels projected. They averaged about 12 cents per pound below that of the first quarter in 1981. Much of the reason for that decline was the anticipation of the large EC export availability from both the 1980/81 and 1981/82 crops, plus the recognition that the EC could be expected to export their surplus, regardless of world sugar prices.

Finally, the fact that EC sugar sales in calendar 1981 were below projected levels does not provide the U.S. industry any relief. The EC will have a huge amount of sugar from the 1981/82 crop available for export--more than 6.8 mmt (raw value). They can be expected to sell that sugar in world markets, regardless of world prices. Nearly 60 percent of the sugar EC has available for export from the 1981/82 crop is eligible for subsidy--probably at levels at least as great as the 12+ cents per pound their subsidies averaged in December, 1981. Absent a change in EC policy, the 1981/82 year will be a year of low prices for U.S. sugar producers. The damage from the EC sugar policy continues to be a major source of the weakness in the U.S. sugar markets.

What is even more unsettling to U.S. producers is that the EC--in spite of the outrageous surplus created by the 1981/82 crop--has tentatively decided to raise sugar support prices for the 1982/83 crop year by 10.5%, higher than for any other commodity. As reported by Simon Harris, in the January 21, 1982 report by Berisford Ltd. (Appendix A):

> [T]here isn't any economic justification for rises of this magnitude in sugar support prices, given the large community structural surplus.

Having done significant damage to world sugar prices in 1981 and 1982, the EC is recklessly and wantonly taking steps that can only exacerbate the damage caused by their sugar regime.

The Meaning of Article 10 of the Subsidies Code

The third issue which I wish to address this morning is the meaning of Article 10 of the Subsidies Code - specifically, the concept of a "more than equitable share of world export trade". Paragraph 2 of Article 10 provides certain guidelines for determining when an export subsidy results in a signatory obtaining a more than equitable share of world export trade. In addition to the criteria set out in Article 10 (2) of the Code, it is my opinion that the concept of "more than an equitable share of world export trade" contained in Article 10 should explicitly apply to those situations where a

country establishes a significant share of world export trade as a result of policies which compensate for that country's basic economic inability to compete in world markets. The EC is one of the world's highest cost producers of sugar, with internal prices running almost twice the level of the price of sugar on the free market. Under such circumstances it is "inequitable" at the least that it should be the world's largest sugar exporter to the free market based on sales supported by a system of massive, unlimited export subsidies.

In order to assure that the Subsidies Code will provide a mechanism for relieving the real economic consequences of unfair export subsidies, it is necessary that the Subsidies Code be interpretated broadly to deal with the wide variety of injuries that can arise as a result of unfair subsidies. In the present Section 301 proceeding brought by Great Western, a primary injury incurred by domestic sugar producers as a result of the EC sugar export subsidy program, is the loss of revenue on sugar sales in the United States caused by the depressed world market prices for sugar which, in turn, are caused by the EC sugar export subsidy program. As the economic data that I have already presented demonstrates, U.S. sugar producers have incurred, are incurring, and, unless the EC sugar export subsidy program is curtailed, will incur substantial lost revenues on sugar sales in the

United States because the EC sugar export subsidy program has badly depressed world market prices. What is needed is an explicit reference in the Code to the situation where third counrty subsidized exports have the effect of decreasing prices in the domestic market, even though the subsidized exports are not sold directly in that domestic market.

Having said this, however, it is still clear that such an injury is covered under the serious prejudice provisions of Article 8 of the Subsidies Code. In this connection, I note that the GATT panels investigating the complaints filed by Australia and Brazil regarding the EC sugar export subsidy program expressly found that these countries suffered "serious prejudice" as a result of the depression in world sugar prices caused by the EC sugar export subsidy program.[5/] Since U.S. sugar prices are generally determined by world sugar prices, the case for serious prejudice to the interests of domestic producers is clear.

5/ GATT Panel Report L/4833, Australia, October 25, 1979 and L/5011, Brazil, October 7, 1980.

ATTACHMENT A

TELEX 88[illegible]
[illegible]FORD LDN

REGISTERED IN ENGLAND No [illegible]

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Sugar F
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YOUR REF.
OUR REF.

21 January 1982

1982/83 EEC Support Prices
for CAP Products in general and sugar in particular

1. At a meeting on 18 January, the European Commission decided not to publish its proposals for 1982/83 CAP support prices until after the Council of Foreign Ministers' meeting to be held in Brussels on 25/26 January. The reason for the delay is that the Commission are looking to the Foreign Ministers for a final resolution of the U.K. Budget problem and to how much of the Commission's Guidelines for bringing CAP expenditure under control the Ministers are prepared to accept.

2. It is expected that the Commission will now publish its 1982/83 price proposals on the afternoon of 27 January.

3. As the Commission had already prepared the price proposals last weekend, it is not surprising that strong rumours were circulating in Brussels as to their contents at the beginning of this week. These rumours are likely to be fairly reliable as it appears that several different sources in Brussels have seen various parts of the proposal documents. Based on these rumours, it appears that:

   a) for most commodities the Commission is proposing a 9 percent rise;

   b) for cereals, however, a lower price rise is assumed of 6.5 percent for intervention and 7 percent for threshold;

   c) for beef, the rise is in two parts: 6 percent at the start of the marketing year and 3 percent at the beginning of December;

   d) for dairy, the Commission are apparently thinking of reducing the proposed increase to only 7.5 or 8 percent, while maintaining the co-responsibility levy at its existing 2.5 percent level.

4. It is particularly in the dairy sector that the Commission's proposals will depend on the outcome of the Council of Foreign Ministers' meeting, as it is in the dairy sector that the Commission's Guidelines are most disputed by the Member States. For cereals, however, the Commission is assuming that the Member States are willing to accept its Guidelines for a realignment of Community support prices towards U.S. support levels. Hence its proposal for a lower price rise for cereals, as against most other commodities. (Although it is noticeable that the Commission is widening the margin of Community preference insofar as the minimum import price for third country imports - i.e. the threshold price - is rising more than the minimum domestic market price - i.e. the intervention price).

5. For sugar, the Commission is proposing a 9 percent rise both in the basic beet price to the farmer, and the white sugar intervention price. The minimum market price for sugar in the Community, however, is determined not only by the intervention price, but also by the storage cost levy which processors and refiners have to pay on all their sales. On our estimate, the rate of storage cost levy chargeable in 1982/83 will rise by almost 30 percent to allow for i) the rise in interest rates, and ii) the increased quantity of sugar in store due to the Community's two million tonne withholding initiative and the need to pay storage refunds on this sugar.

6. As a result, we estimate that on the basis of the Commission's price proposal the minimum market price in the Community (known as the effective support price) will rise some 10.5%. For the U.K., Ireland and Italy, however, the effective support prices rise by a slightly smaller proportion as their intervention prices include a regional premium which is an absolute amount unaffected by the price proposals.

Proposed Change in EEC Support Prices for Sugar
(ecu/100 kg)

	1981/82	Commission 1981/83 Proposals	Change ecu	Change %
1. Basic Beet Price	35.91	39.14	3.20	8.9
2. Intervention Price, White Sugar				
- Common Level (b)	46.95	51.18	4.23	9.0
- U.K.	48.16	52.39	4.23	8.8
3. Storage Cost Levy	3.55	4.60(a)	1.05	29.6
4. Effective Support Price (2+3)				
- Common Level (b)	50.50	55.78	5.28	10.5
- U.K.	51.71	56.99	5.28	10.2

NOTE: (a) Berisford estimate
(b) Applies to all countries apart from the U.K., Ireland and Italy.

7. Because of the Community's agri-monetary system, the changes in national currencies will differ in some cases. The Commission are proposing the following changes in agricultural conversion rates ("green" rates)

"Green" Rates

	Current Rate	Proposed New Rate
	(national currency per ecu)	
Germany	2.65660	2.51817
Netherlands	2.81318	2.69073
U.K.	0.618655	0.593195
Italy	1,258.00	1,275.00

These, in turn, lead to changes in the monetary compensatory amounts (m.c.a.'s) applied by the Member States in question on both intra-Community trade and on trade with third countries.

Monetary Percentages

	Current Level	Proposed New Level
	(percent)	
Germany	+ 8.3	+ 3.3
Netherlands	+ 4.3	nil
Italy (a)(b)	- 4.4	nil
U.K.(b)	+ 8.0	+ 4.0

NOTE: (a) This Italian rate is for sugar only. For other commodities it is -1.8)
(b) Both the Italian and U.K. m.c.a.'s can vary weekly. Those for Germany and Netherlands are fixed for long periods of time.

8. If these agri-monetary proposals were to be adopted, then the changes in national currencies would be as below. For the countries not listed - Denmark, Belgium, France and Greece - the changes in national price terms will be the 9 percent of the Commission's proposal in ecu terms. It is likely, however, that the Commission's agri-monetary proposals will not be adopted as they stand, particularly in the U.K.'s case where the most likely outcome is no "green" pound revaluation or only a small one of (say) one percentage point. In the figures below, U.K. figures are given on both bases - i.e. with the full revaluation as proposed by the Commission (least likely), and with no revaluation (more likely). France is included in the table because of its importance as a Community exporter, even though there are not any "green" rate changes proposed for France.

Changes in EEC Support Prices in National Currencies
(National currency/1,000 kg)

	Current 1981/82	Proposed New Prices for 1982/83	Change NC	Change %
1. Intervention Prices				
Germany	1,247.30	1,288.80	41.50	3.3
France	2,857.60	3,115.10	257.50	9.0
Netherlands	1,320.80	1,377.10	56.30	4.3
U.K. (a)	297.94	(310.77)	12.83	4.3
U.K. (b)	297.94	324.11	26.17	8.8
2. Effective Support Prices (c)				
Germany	1,341.60	1,404.60	63.00	4.7
France	3,073.70	3,395.10	321.40	10.5
Netherlands	1,420.70	1,500.90	80.20	5.6
U.K. (a)	319.91	(338.06)	18.15	5.7
U.K. (b)	319.91	352.57	32.66	10.2

NOTE: (a) Assumes "green" pound change as proposed by Commission.
(b) Assumes no "green" pound change.
(c) Effective support prices calculated using Berisford estimate of size of storage cost levy.

9. Taking the current official rates * being used by the Commission for converting to ecu's world prices expressed in U.S. dollars ($ U.S.1 = 0.949346 ecu), the proposed 1982/83 EEC support prices are:

	U.S. $/1,000 kg	U.S. cents/lb
Intervention price	539.11	24.5
Effective Support Price	587.56	26.7

10. Two final caveats about the Commission's proposals are first that these have not, as yet, been officially published. We will circulate a further note when the proposals are published and more detail is available. However, we do not expect any changes in the proposals for the sugar sector.

11. Second, and more important, is that since the early 1970's, the Council of Agriculture Ministers when considering the price proposals has always agreed a higher level of price increase than proposed by the Commission. On this basis it is highly likely that the final outcome in the sugar sector will be a rise in the common intervention price of (say) 10 percent, rather than the 9 percent proposed.

12. Two implications arise from these proposals:

I) There isn't any economic justification for rises of this magnitude in sugar support prices, given the large Community structural surplus. The reason that the Commission has proposed such a large rise is because it has judged - on economic (farm income) and political grounds - that an average price rise of 9 percent across all CAP products is necessary. Given that the rises for cereals and dairy will be lower than the average, the Commission had little scope for a less-than-average price rise for sugar as well. Particularly is this so as, according to the Commission's Guidelines document of October 1981, it is felt that the quota system for sugar production and the fact that producers have to pay most of the costs involved in disposing of surplus sugar on the world market mean that the Budget costs of the sugar sector are under control already.

II) A differentially higher price rise for sugar as against cereals will tend to increase the relative attractiveness of sugar production as against cereal production. This can only militate against the Commission's suggestion that Community sugar sowings in spring 1982 will be reduced because of the increased quantity of sugar that will be carried into 1982/83 (due to the EEC's stockholding initiative to withhold upto two million tonnes from the world market). Although sowings may be lower, they will not be lowered by as much as otherwise might have been the case

Simon Harris
21 January 1982

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* Applicable from 20 January 1982. This rate is reviewed weekly.

Senator DANFORTH. All right.

Mr. Rosenthal, you are next. Again, we are half-way through a vote, I am sorry to say. I will be back. In any event, my hope is that somebody else will be back before I get back.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

[Recess.]

Senator BENTSEN. The subcommittee will come to order.

First, let me apologize to you for the interruptions and the delays.

Mr. Rosenthal, why don't you go ahead.

STATEMENT OF PAUL ROSENTHAL, COLLIER, SHANNON, RILL & SCOTT, REPRESENTING THE NATIONAL BROILER COUNCIL AND 11 OTHER POULTRY AND EGG ASSOCIATIONS, AND THE NATIONAL PASTA ASSOCIATION

Mr. ROSENTHAL. Thank you, Senator Bentsen.

My name is Paul Rosenthal, and I am an attorney with the law firm of Collier, Shannon, Rill & Scott here in Washington, D.C. Our firm has filed section 301 petitions within the last 6 months on behalf of the poultry and pasta industries.

The poultry case alleges that the EC export subsidy on poultry meat has resulted in the EC attaining more than an equitable share of the world export trade to the detriment of U.S. producers of poultry.

The pasta case alleges something a little bit different. It does not involve third country exports, but rather exports to the United States. We contend that the EC subsidy on pasta exports has hurt the U.S. industry in that there are increased imports of subsidized pasta coming into the United States, particularly the northeastern region of the United States.

Both cases raise questions about the effectiveness of the subsidies code, as well as the effectiveness of section 301 as a vehicle for vindicating U.S. rights under the code.

These 301 petitions I have just described are of relatively recent vintage. They are two out of the six cases that Ambassador Brock mentioned have been filed since August 1981. I, therefore, cannot claim the same consternation with delays by the EC over cases that have dragged on for years and years, such as the those involving citrus and wheat flour. However, we have seen enough in the last 6 months to get very concerned.

The pasta and poultry cases both involved requests for consultation early on, and both involved footdragging on behalf of the EC in agreeing to consultations. In fact even though the pasta case was filed last fall, USTR representatives this morning told me that the EC has not finally agreed to consultations on that case. So we are very concerned about the procedures used under GATT.

We also have questions about the substantive interpretations of the code. For example, article 10 of the code provides only limited guidance as to what constitutes an equitable share of the world market. Article 10 also provides very limited guidance as to what constitutes a previous representative period from which the notion of equitable share can be ascertained.

As a result, we hear rumblings that the EC may contend that since the subsidies started in 1967 for poultry, we cannot go back to the presubsidy period to get a previous representative period. Therefore, the EC argues basically, that all their subsidies should be grandfathered under the code, and we start from 1979 or 1980.

Of course, with their $6.5 billion worth of export subsidies covering a host of products, the EC would certainly like to have that kind of interpretation of the code. Such an interpretation, however, would render the code meaningless for most of the U.S. agricultural industry.

The code also fails to take into account, at least as far as we can tell, the following situation. The EC has been subsidizing poultry and has displaced the United States from the Middle Eastern market, and has maintained that Middle Eastern market as a result of excessive subsidies. Now the EC is faced with another entrant into the market, Brazil, which is attempting to subsidize its poultry exports to the Middle East to compete with the EC. When we complain to the EC, "You have picked our pockets, you have kicked us out of the market," they say, "Yes, but now we are only subsidizing to keep Brazil out."

It does not help U.S. poultry producers very much that Brazil is also subsidizing. Our original complaint is against the EC, and we believe the EC should be held accountable.

We view section 301 as having great potential for negotiating resolutions to the problems presented by EC export subsidies, but we don't delude ourselves into thinking that the GATT is the be-all or end-all of the process. We believe that if negotiations fail at the GATT, we should make use of the complete range of remedies available under section 301.

We would not be happy if section 301 just became a second track for pursuit of GATT procedures. If negotiations fail at the GATT or the process does not work well, the United States should be willing to take retaliatory action on a unilateral basis.

Thank you.

[The written statement of Mr. Rosenthal follows:]

TESTIMONY OF PAUL C. ROSENTHAL OF COLLIER, SHANNON, RILL & SCOTT

My name is Paul Rosenthal and I am an attorney with the law firm of Collier, Shannon, Rill & Scott in Washington, D.C. During the past five months, we have initiated two Section 301 actions on behalf of agricultural trade associations challenging foreign export subsidies which we believe violate provisions of the GATT Subsidies Code. Both cases have been accepted by the United States Trade Representative's (USTR's) office and will be the subject of bilateral consultations under GATT auspices in the next few weeks.

The first action, filed on behalf of the National Broiler Council and 11 other poultry and egg associations, challenges the European Community's export refund on poultry meat. That subsidy, which in 1980 exceeded $100 million, has been responsible for the systematic exclusion of the United States poultry products from major third country markets. Despite the efficiency of U.S. poultry producers, only four percent of U.S. poultry meat production is exported. On the other hand, less efficient E.C. producers, who are the beneficiaries of an eight to 17 cents a pound export refund, export approximately 17 percent of their production.

Article 10 of the Subsidies Code prohibits export subsidies on primary agricultural products if the subsidies result in a signatory country obtaining "more than an equitable share of world export trade." The U.S. poultry industry contends that as a result of the E.C. subsidy, it has been denied an equitable share in world markets. Nowhere is this more evident than in

the largest of third country markets, the Middle East. Over the past ten years, the U.S. has been able to obtain about 11 percent of combined U.S.-E.C. exports of whole chickens to the Middle East market. Prior to 1967, when there was no E.C. subsidy in effect, the U.S. captured over 95 percent of that same market. Arguably, the market was much smaller then. But when the market began to grow in the early 1970's, the E.C. subsidy provided the impetus that allowed European producers to achieve complete dominance, and then once achieved, to maintain it.

Our second Section 301 case was filed on behalf of the National Pasta Association. It challenges the imposition by the E.C. of an export refund granted on the exportation of pasta products. The subsidy currently amounts to approximately 10 cents a pound and has resulted in a dramatic increase of imports of pasta products from Italy that has injured or threatens to injure U.S. industry. During 1979 and 1980, Italian imports grew 35 percent, with import penetration — that is the share of the U.S. market — growing from 2.0 to 2.6 percent. In 1981, similar growth in volume is expected, while import penetration is expected to approach 4 percent. This represents a doubling of market share in just two years. Moreover, in certain regional markets, particularly the Northeast, import penetration exceeds 10 percent, and major supermarket chains, which a year ago were not even carrying Italian brands, are now allocating as much as 33 percent of their pasta shelf space to the imported brands. Additionally, the lower prices these chains

pay for subsidized imported pasta at the wholesale level allows them to charge 10 to 20 cents a pound less than they charge for domestic brands.

Article 9 of the Subsidies Code prohibits the imposition of any kind of export subsidies on a non-primary, or in laymen's terms, a processed product. Although pasta is largely produced from durum wheat, it is not a primary agricultural product. Durum wheat must be finely ground into semolina flour which is then mixed with water to make a stiff dough. It then is cut, under pressure, into the specific shape of the noodle. With all of this processing, which adds 44 percent to the value of the flour, it would be a mockery of the Code to classify pasta as a primary product. Consequently, we have argued that it is "other than primary," in which case the export subsidy is illegal under Article 9 of the Code.

Both Section 301 actions attempt to vindicate U.S. rights arising out of the multilateral trade agreements, specifically the Subsidies Code. Yet they are inherently different in their allegations, and they provide different perspectives from which to assess the effectiveness of Section 301.

The poultry action, to the extent that it focuses on displacement of U.S. products in third country markets, raises several legal questions which must be answered if we are to evaluate the effectiveness of the Code as a vehicle for opening third country markets to U.S. products. For example, what constitutes more than an equitable share of world markets? The Code provides some guidance in that it the displacement of a

signatory country's exports in relationship to certain previous representative periods. But what if there exists no recent previous representative period? In the poultry case, we argue that the most recent representative period in the Middle East was pre-1967 when there was no subsidy in effect. That was the only time normal market conditions existed. But, although the U.S. captured over 90 percent of the market at that time, the market was extremely small. Does this mean that in the absence of a recent representative period, we cannot bring a case under the Code despite the convincing nature of our case? If so, many existing subsidies offered by our foreign competitors would have been "grandfathered" under the Subsidies Code, rendering the Code's provisions meaningless for many U.S. industries.

A problem of a different sort arises when a second exporting country not a party to the original case enters the market and engages in subsidization. Could the E.C. argue that its subsidy is merely a response to the new exporter's subsidy, and that the U.S. must therefore pursue an action against the new exporting country even though the E.C. excluded the U.S. before the second country ever entered the market. This, in fact, is occurring in the Middle East where Brazil is now challenging the Europeans' market share as a result of a subsidy even more excessive than the E.C.'s. In our view, Brazil's improper subsidy neither excuses the E.C.'s original displacement of U.S. exports nor the E.C.'s continuing subsidy program.

Issues of a different nature arise in the context of our action on behalf of the National Pasta Association. In that

case, we argue that the E.C. subsidy on pasta exports is per se illegal because it constitutes a subsidy on an "other than primary product" which is prohibited by Article 9 of the Code. This argument should be dispositive of our case. To our surprise, however, we have been asked to provide substantial information demonstrating the extent of the injury suffered by the domestic industry. Section 301 of the Trade Act of 1974, as amended, does not require a petitioner to demonstrate injury in order to have a petition accepted by the USTR. Indeed, the legislative history suggests quite the contrary. Yet, we were informed that several agencies opposed accepting this case on the grounds that the volume of imports in question was so small that the degree of injury had to be minor. This, despite our dispositive legal case under the Code. We recognize the GATT will take into account the adverse affects upon the signatory in fashioning a remedy. However, if every section 301 case involving subsidized imports were to require a showing of material injury, the section would fail as a vehicle for vindicating U.S. rights in international trade.

Such were the considerations of the National Pasta Association when it chose to put its case in the hands of the U.S. Government under section 301. With a total budget of 1/2 million dollars and a single professional staff member, NPA could not have afforded to pursue a countervailing duty action. Consequently, it sought relief under Section 301 as an alternative means of combatting this unfair and injurious trading practice. Were the Executive Branch to subject 301 cases to

injury standards, it would eliminate what Congress intended to be the most accessible avenue to challenge unfair subsidization practices.

I would like to briefly comment on the nature of the relief available under section 301. In both the poultry and pasta actions, we have been struck by the USTR's predisposition to focus almost exclusively on the GATT side of section 301. It should be remembered that section 301, in addition to providing a procedure under which the government may resolve disputes arising under international agreements, also authorizes — and I believe from the legislative history — encourages unilateral action. It is an open question whether the current Administration will pursue the unilateral alternative if its efforts in the GATT are unsuccessful. This Committee must ensure that the Executive Branch is, in fact, willing to use the full range of section 301 remedies and act unilaterally if it receives no satisfaction under GATT dispute settlement procedures. If the Administration is not willing to make full use of the remedies available, then section 301 will be rendered useless because our trading partners will know they can oppose the U.S. in the GATT — where cases seldom reach final resolution — and if successful, still be immune from unilateral retaliation. Thus, they can continue to subsidize without fear of reprisal.

We applaud the statements of Ambassador Brock, Secretary of Agriculture Block and other high Administration officials serving notice on our trading partners that their agricultural export subsidies will no longer go unchallenged. Indeed, the

poultry and pasta cases were filed in the belief that this Administration would make good on its promise to enforce U.S. rights in international trade. Whether this promise will be kept remains to be seen, but we remain optimistic.

An important reason for our optimism is this Committee's interest in the 301 process. The continued leadership and oversight demonstrated by this Committee are vital to ensuring that section 301 becomes the effective tool for enforcement of U.S. rights that Congress intended.

Summary of Testimony of Paul Rosenthal
Collier, Shannon, Rill & Scott
Washington, D.C.

- The United States poultry and pasta industries have recently filed actions under section 301 challenging the legality under the GATT Subsidies Code of E.C. agricultural export subsidies.

- The poultry case alleges that the subsidy has resulted in the E.C. obtaining more than an equitable share of world export trade to the detriment of U.S. producers and therefore is in direct violation of Article 10 of the Subsidies Code.

- The pasta case alleges that the E.C. subsidy on pasta exports has led to a dramatic increase in Italian pasta exports to the U.S., thereby injuring U.S. producers. More importantly, the case stands for the proposition that an export subsidy on a processed agricultural product such as pasta is per se illegal under the Code.

- Both cases raise questions about the effectiveness of the Subsidies Code, as well as the effectiveness of section 301 as a vehicle for vindicating U.S. rights under the Code.

- For example, Article 10 of the Code provides only limited guidance as to what constitutes an "equitable share of the market," as well as what constitutes "the previous representative period" from which the notion of equitable share can be ascertained. Moreover, the Code fails to take into account certain situations where normal market conditions have never really been in effect or where a second non-party to an action begins subsidizing to displace the exports of the first subsidizing country.

- Section 301 does not require a party to meet an injury test, yet the Executive Branch has argued that in section 301 cases involving imports into the U.S., the petitioners should demonstrate injury even if their legal arguments are dispositive as to Code violations. Such an injury requirement could render section 301 inaccessible to industries that must compete against blatently illegal export subsidies, but lack the resources to meet the burden of showing material injury.

- Section 301, in addition to providing a procedure for resolving disputes under international agreements, also authorizes unilateral responses to trading practices which violate those agreements. In its attempts to achieve diplomatic resolution to these disputes, the Executive Branch should not ignore the availability of unilateral retaliation as a remedy, and it should be prepared to use it if efforts on behalf of U.S. industry fail in such forums as the GATT.

Senator BENTSEN. Gentlemen, you have been held longer than you should have, and I appreciate that. I apologize for it.

I look forward to reviewing these statements. I think your testimony will be helpful to us.

Let me just ask you if you have any better definitions, something to deal with more specifically when we are talking about the equitable share is there any way to delineate that?

Mr. ROSENTHAL. What I would prefer to see is an outright ban on export subsidies. I think our industries in the United States would do rather well if that were the case. In fact, under article 9 of the code, which governs nonprimary agricultural products, there is what appears to be an absolute ban on export subsidies. I think it would be preferable to move so-called primary agricultural products under the article 9 category, where you say export subsidies are banned altogether. That would be the simplest and, I think, the best solution from the point of view of U.S. agriculture.

Senator BENTSEN. I think that is the best one all right, but do you think that it is a realistic objective?

Mr. ROSENTHAL. I think it is a realistic objective. Let's not forget that the subsidies code, while recognizing the need for some countries to have subsidies for internal purposes, encourages countries to get away from that.

We may not be able to get rid of subsidies altogether tomorrow, but that is the goal that should be sought over time. It may be that there should be a limit put on the length of time in which a country can move from subsidization to nonsubsidization.

Senator BENTSEN. Would any of the others care to comment?

Mr. SANDSTROM. We feel that the concept of inequitable share should explicitly incorporate the concept of competitiveness. Let me give you an example.

The European Community is, if not the highest, one of the highest cost producers of sugar in the world. Without subsidies, generally, they would not be able to sell 1 pound of sugar in the world market. Yet in 1981 they surpassed Cuba and became the largest exporter of sugar in the world, well over 4 million tons.

There is something basically inequitable about the Community using massive subsidies, drawing on the capital resources it has, to push that amount of sugar into the world market, when without those subsidies they probably are not be selling anything. It does extreme damage to countries who otherwise would be competitive in those markets, including the United States.

Mr. HERON. Responding directly to the question as to whether or not it is realistic to expect subsidy elimination, it is certainly suggested that every effort ought to be made to move toward that goal. If we are going to have any discipline or order in world trade, it is necessary to establish the rules and then live by them.

The minute we move away from the established rules, orderly trade turns to chaos. That is in part what this hearing today is discussing. As you so well pointed out in the case of citrus, where the Europeans have not observed the most-favored-nation rule, the foundation of trading rules, we have a very injurious situation in Texas, Arizona, California, and Florida.

Senator BENTSEN. I just sold an interest I had in an orchard to a Frenchman. Do you think he will figure out how to crack that market?

[Laughter.]

Mr. HERON. As everyone knows, Texas grapefruits, with the low duty, do extremely well. But the Texas oranges that have to face the very high discriminatory duties are not able to penetrate the market. The same is true for California navels. California Valencias, during lower periods, do better.

Senator BENTSEN. Thank you.

Senator DANFORTH. Thank you very much, gentlemen.

Mr. HERON. Thank you, Mr. Chairman.

Senator DANFORTH. The next witness is Alan Wolff.

Welcome back.

STATEMENT OF ALAN WOLFF, ESQ. VERNER, LIIPFERT, BERNHARD & McPHERSON, WASHINGTON, D.C.

Mr. WOLFF. Thank you, Mr. Chairman.

I am here today to testify on the subject of U.S. policy regarding subsidy commitments by developing countries. If I might, I will summarize my remarks very briefly, and if my testimony could be entered into the record in whole, I would appreciate it.

The general point that I am here to address today is really what is at issue in the granting of an injury test to developing countries. What is the question of the commitments policy is simply this: To what extent will the developing country be able to ship its product into this market bearing subsidies without us taking offsetting measures.

In other words, how much damage will be caused, how much injury will be caused before the United States would have a right to respond, or U.S. industry, a group of workers, or a firm would have a right to a reaction from the U.S. Government. How many unemployed, how many plants closed before the U.S. Government would act?

We let all countries compete in this market on the basis of comparative advantage. They may have lower wages, they may have other advantages. Shoes and steel, and within limits textiles and apparel, come into this country and our people have to compete with them, and we don't intervene unless a foreign treasury adds a subsidy element to the shipment.

We have said, "We don't have an injury test in our law. We will grant an injury test if you folks, you developing countries, will undertake some degree of commitment with respect to phasing out the export subsidies."

The Brazilians said, "Yes, we will do that. We will undertake to phase out of export subsidies." The Pakistani and the Indians said, "No, we want to have a free ride. The most-favored-nation clause of the GATT requires that you give us an injury test in any event, and you let us subsidize up to the point of causing material injury or threatened material injury to your industries."

To Pakistan, the Carter administration said yes; to India, they said no. Ruben Askew would not do and Bill Brock then gave in. It is a question of equity. Someone has to lose and the American

worker, firms, and industries are losing as are the developing countries because what they are doing is taking their meager resources and subsidizing our consumption. So it is a foolish policy all around.

The Tokyo round clearly did not solve all of our problems in all areas. It did give us a framework within which to deal with problems. We knew we had a problem with the subsidies code when it was negotiated, we wanted something better.

We wanted a requirement in the code agreed to by 86 nations that they would, in the case of developed countries, completely eliminate export subsidies and we got that, in the case of developing countries that they would phase out their export subsidies and we could not get that in a multilateral forum. So we reserve the right not to apply the code to those countries, and not to grant them an injury test.

When India came in and said, "Well, we will give you the following commitment. We will not subsidize beyond what it takes to make any sales in your market," we said, "Fine, we accept that commitment." I don't think they can live up to even that commitment. So we don't have very much in the way of a commitments policy.

Legislation is not always the best way to get at these problems. Bill Brock, I understand, this morning said that it would build in excessive rigidity and I understand that. The Heinz bill is one approach to requiring that firm commitments be given and spelling out exactly what they should be.

With respect to that bill, I think there are difficulties. A Bangladesh or a Chad or a Paraguay are different than a Brazil or a Korea or a Taiwan. So I would think that if legislation proves necessary, and I would hope it would not, but I suspect it will, that there be some negotiating flexibility included.

Thank you.

[The written statement of Mr. Wolff follows:]

STATEMENT OF ALAN WM. WOLFF, PARTNER, VERNER, LIIPFERT, BERNHARD & MCPHERSON

Mr. Chairman:

I wish to thank the Committee for the opportunity to present my views on an important issue of trade policy -- the degree to which the United States should insist upon "commitments" from developing countries (LDCs) on the use of their export subsidies, in exchange for extending an injury test to these countries under our countervailing duty law. In commenting on what has become known as the "commitments policy", I also propose to comment in a general way on S.1511, a bill introduced by Senator Heinz on this subject.

Like most important trade policy issues, this one is controversial. The testimony I am giving today reflects my personal views. I am not here to present the views of any clients of our law firm. I will keep my testimony short.

From 1976 to 1979 I served as Deputy United States Trade Representative. I was very much involved in setting U.S. negotiating policy in the Tokyo Round of Multilateral Trade Negotiations (the MTN) and, on occasion, helping to implement that policy, both generally and, more specifically, with regard to efforts to improve international discipline over trade-distorting subsidies. I would be the first to concede that the Tokyo Round did not neatly resolve all the trade problems confronting the United States. In fact, a quick glance at the newspaper headlines would show quite clearly that the most intractable problems remain very much with us.

The MTN did, however, improve the international framework for dealing with trade problems. It can, and should, be used to that end. The success or failure of our trade policy will depend very much upon the degree to which Administration trade policy officials are willing and able to press U.S. interests, almost on a continuing basis, within the MTN framework.

On the whole, I find myself very much impressed with the way in which the Administration is conducting its trade policies and, in particular, its efforts to implement the MTN agreements. I agree with what is being done far more than I disagree. However, there are areas of disagreement and the position that the Administration has taken on the commitments policy is one such area.

I believe that it is not only in the U.S. interest, but also in the interest of the developing countries, to limit the use of trade-distorting export subsidies as much and as quickly as possible. This was the basic reasoning behind the decision, taken during the last phase of the MTN, to insist upon commitments from developing countries with regard to export subsidy phase-outs in exchange for extending a countervailing duty law injury test to those countries.

Ideally, the Subsidies/Countervailing Measures Code negotiated in the MTN would have included a clear requirement under which developing countries would have agreed unequivocally to phase out their export subsidies on manufactured products within a specific period of time. For a number of reasons such a general provision was, and I believe remains, non-negotiable.

Rather than risk collapse of the overall negotiating effort, we made a deliberate decision to settle for a second-best solution.

This second-best solution -- that the U.S. would not agree to application of the Code between it and a developing country (and so would withhold the injury test) unless that country had given a satisfactory commitment on its export subsidies -- was based upon the plain language of Article 19, paragraph 9 of the Code. Article 19:9 reads as follows:

> "This Agreement shall not apply as between any two signatories if either of the signatories, at the time that either accepts or accedes to this Agreement, does not consent to such application."

At the negotiating table, the U.S. representatives made it quite clear that the decision to apply the Code provisions to LDC signatories would depend upon their willingness to give subsidy commitments.

I have attached to my testimony a memorandum by John Greenwald, who was one of the principal negotiators of the Subsidies/Countervailing Measures Code, which sets forth in some detail the background to the Code provisions on developing country subsidies and the evolution of the U.S. commitments policy. It is as good an explanation as I have seen on the issues involved and I would urge you to read it.

Since the commitments policy was first articulated, it has become subject to considerable criticism. Within the Administration, critics have questioned it on two basic grounds. First, it has been characterized as an effort to get bilaterally what the

U.S. could not get multilaterally. This characterization is, in fact, accurate -- but it ignores the merits of the policy. It frequently makes perfect sense to go after concessions in a bilateral context which cannot be gained multilaterally.

In a major multilateral negotiation there is a political element injected into discussions -- a bloc approach, North versus South -- that it not generally present in bilateral talks. The level of political rhetoric is much less in a bilateral context and a country's real economic interests in the negotiation come into much sharper focus. Accordingly, there is a better climate for, greater incentive to reach, an accommodation of differences. The commitments policy placed the emphasis on improving discipline on LDC subsidies on a series of post-MTN bilateral discussions. This shift to a bilateral approach cannot reasonably be dismissed simply because it is bilateral in nature. The merits of seeking subsidy discipline remains the central issue whether the forum for negotiation is bilateral or multilateral.

A second criticism of the commitments policy that has been raised within the Administration is that by conditioning extension of the countervailing duty law injury test upon the willingness of LDCs to undertake subsidies commitments, we are running afoul of the most-favored-national (MFN) rule of GATT Article I. While one could debate the legal issue this raises at some length, I would rather focus on the policy issue involved.

There is an inherent conflict between the twin pillars of the GATT -- MFN and reciprocity. Under the MFN rule, any GATT

member can quite simply refuse to grant concessions itself, and still benefit fully from reciprocal tariff reductions and other concessions agreed to between third parties. This is a classic "free-rider" problem.

The developing countries as a group have, for several years, successfully resisted granting trade concessions while enjoying the benefits of concessions granted by the U.S. and other countries. In the tariff area, for example, the U.S. and most developed countries have bound their tariffs at below 10%; in contrast, most LDCs have not bound their tariffs and tariff rates of 100% or 200% are, unfortunately, not uncommon.

The commitments policy reflected a decision that, at least in the subsidies area, the U.S. would insist upon some discipline over LDC practices before extending the injury test to those countries. It was a deliberate choice for a degree of reciprocity, notwithstanding any possible MFN problem.

The ideal situation would, of course, be a trading system in which all countries viewed the reduction of all trade barriers to be in their self-interest. In those circumstances there would be no practical conflict between the MFN rule and reciprocity. However, that situation does not exist. The marked tendency is for countries to view only the reduction of other countries' barriers, not their own, to be in their self-interest.

Unless the U.S. is willing to insist upon a reduction of foreign trade barriers, that is to insist upon a fair degree of reciprocity, I fear that the trading system will increasingly be perceived as one-sided and, ultimately, U.S. domestic support for

an open international trading system will disappear. This is, I hope you agree, an overiding consideration. Viewed in this light, I think that the decision to insist on commitments from LDCs on subsidies was the right one.

I suspect that, notwithstanding the formal criticisms that have been made of the commitments policy, the real source of complaint is the burden such a policy places on U.S. negotiators. The negotiation of satisfactory subsidies commitments is difficult. It involves a willingness to say "no" to our trading partners far more often than most negotiators like.

Perhaps because of these difficulties, the commitments policy, as implemented to date, has not been a success. In my view, the only respectable commitment negotiated has been the one with Brazil. The others are very weak. The first real breakdown in the commitments policy, as it was applied in practice, involved a virtually meaningless commitment from Pakistan negotiated in early 1980. To his credit, Governor Askew vetoed a similar commitment negotiated with India when he was USTR, but the present Administration reversed the Askew decision and accepted a poor agreement with India.

For those that support the concept of insisting on LDC subsidy commitments, the question has become what has gone wrong with the policy as implemented and how can it be best corrected. My own view is that the situation would be corrected if the Administration were willing to take a harder line in negotiations. But, to be candid, I don't know how far the Administration is prepared to go in this direction.

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If the answer is not very far, then a legislative response -- something along the lines of S.1511 -- may be the only solution. Personally, I hope that legislation proves unnecessary. It is difficult to craft a legislative directive that gives the flexibility needed to implement a sensible commitments policy.

To give you a example, the situation of developing countries varies widely. A Bangeledesh, a Chad or a Paraguay is in a far different position, in terms of level of economic development, than a Brazil, a Korea or a Taiwan. S.1511 would require developing countries (1) not to increase the number of product classes receiving export subsidies, (2) not to introduce new export subsidies, (3) not to increase the amount of existing export subsidies and (4) to phase out all export subsidies accordingly to an agreed timetable, except that export subsidies would be phased out immediately on products in which the U.S. International Trade Commission determines that the LDC is competitive. Such a scheme may be reasonable for an advanced developing country - although evan here I don't think that there is enough negotiating flexibility - but it is not reasonable for the large number of poorer developing countries that are trying desperately to form some sort of industrial base.

One cannot predict in advance the type of subsidy commitment that would be best suited to any particular case. As a result, I feel that the Administration's negotiators must maintain the confidence of the private sector and the Congress, and rigid rules should not be prescribed. On the other hand, given the poor record to date on subsidy commitments, a marked improvement in the performance is required and, in spite of my reservations about denying the Administration negotiating flexibility, a legislative answer may, ultimately, prove to be the only available approach if there is to be no change in current policy.

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M E M O R A N D U M

To: Alan Wm. Wolff

From: John D. Greenwald

Date: January 21, 1982

Subject: The Subsidies Code and the LDC Commitment Policy

- -

I have tried to set out below a detailed and impartial review of the subsidies code and the commitments policy developed during the MTN. The detail is easy enough. Impartiality is a tougher proposition because I was deeply involved in the negotiating process.

The Code, like any internationally negotiated document, has its share of ambiguities. It was clear to all involved that the effectiveness of the agreement reached would, from the U.S. point of view, depend upon the ability of the U.S. government to press its interests vigorously -- i.e. to take difficult policy decisions in implementation and, above all, be prepared to say "no" to our trading partners.

With these caveats, the analysis is as follows.

a. Background to the Developing Country (LDC) Provisions of the Subsidies Code/Commitments Policy

In order to understand how and why the LDC provisions of the Subsidies Code were developed, it is important to understand the context in which they were negotiated. Key factors were --

(1) The GATT subsidy rules for LDCs were limited prior to the Code. The developing countries were bound by Article XVI:1, the general notification/consultation rule, and the export subsidy rule on primary products. They were not, however, bound by the substantive rules on export subsidies on industrial products (i.e. Article XVI:4), which only apply to some 17 developed countries which have accepted it.

(2) The U.S. was, and probably remains, the only country with a proclaimed interest in discipline over LDC subsidies. Most developed countries were (and probably remain) far more worried about resisting U.S. pressure on the subsidy issue generally than about LDC subsidies.

(3) Under the MFN clause of GATT Article I, a GATT signatory can argue that any concession which is granted to another country (i.e. such as an injury test in the U.S. countervailing duty law) must be granted to all GATT contracting parties.

(4) There is an inescapable tension in the GATT between the MFN rule and the concept of reciprocity. The phenomenon of the "free rider" (i.e. a country which benefits from concessions given to others, but which does not grant any concession itself) must be faced.

These factors meant that the burden for dealing with LDC subsidies fell exclusively on the U.S. and that unless the U.S. was willing to withhold the countervailing duty law injury test there would be no effective leverage for negotiations with the LDCs.

b. The Provisions of Article 14 of the Code Governing LDC Subsidies

For all its verbiage Article 14, which establishes the basic rules of the Code governing LDC subsidies, is straight-forward enough. It provides as follows:

(1) the rules of the Code on export subsidies on agricultural products apply to LDCs in the same manner as to developed countries;1/

1/ Article 14 paragraph 10

(2) the rules of the Code on domestic subsidies apply equally to developed and developing countries, except that a case under the Code cannot be brought against an LDC for "serious prejudice" resulting from the effect of the subsidized import competition in third country markets (i.e. cases can be brought based on the effects of the domestic subsidy in (i) generating exports to the market of the complaining country or (ii) displacing imports in the home market of the subsidizing country);2/

(3) the use by LDCs of export subsidies on industrial products is not prohibited per se (as is the use of export subsidies by developed countries); LDCs are, however, under an obligation not to use export subsidies in a way that causes "serious prejudice to the interests of other signatories." Serious prejudice can arise from displacing imports in the home market of the subsidizing country, in third country markets, or from the adverse effects of the subsidized exports in the market of the complaining country. Serious prejudice is defined in terms of "adverse effects."3/

(4) Developing countries are not required to give any commitment on a phase-out or phase-down of their export subsidy programs, but are urged to do so; if an LDC does give such a commitment, then no case alleging "serious prejudice" may be brought against that country as long as that country is complying with the phase-out commitment.4/

c. The U.S. Policy on LDC Subsidy Commitments

The U.S. tried to get a requirement in Article 14 of the Code that LDCs must give commitments with respect to the phase-out and elimination of export subsidies. Except for the Brazilians, no developing country would agree to such a requirement. Rather than hold out for a general rule, the U.S. then made a deliberate decision to use the non-application provisions of Article 19 paragraph 9 in order to maintain leverage to enforce commitments on a case-by-case basis.

2/ Article 14 paragraph 7

3/ Article 14 paragraphs 2-4

4/ Article 14 paragraphs 5-6; paragraph 8

Article 19 paragraph 9 of the Code expressly permits a country to refuse to apply the terms of the agreement to a non-signatory. In concluding the negotiations on the general rule of Article 14, the U.S. negotiators unequivocally stated their intention to invoke Article 19:9 if an LDC refused to grant a satisfactory subsidy commitment.

There has, subsequently, been criticism of the lack of an official written record with regard to U.S. intentions concerning LDC commitments. The reason there is no such official record is quite simply that none was thought necessary. Article 19:9 is clear on its face -- it grants the U.S. the ability to refuse application of the Subsidies Code to anybody for any reason whatsoever. Nobody involved in the negotiations even considered that some sort of formal record would be necessary for the U.S. to exercise its rights.

A more troublesome problem involved the conflict between the U.S. decision to withhold the injury test pending negotiation of a commitment from an LDC and the MFN requirements of GATT Article I. Legal arguments can be fashioned to support such action by the U.S. but in policy terms, there is no satisfactory solution to the inherent tension between the MFN rule and reciprocity. The commitments policy reflected a clear decision that in the subsidies context, reciprocity could not be sacrificed.

d. The Commitment Policy in Practice and the Subsidies Code

The Administration has indicated some disenchantment with the subsidies code and the commitment policy. Statements have been made to the effect that (a) enforcement of the commitments policy could mean findings against the U.S. for violation of GATT Article I and (b) the commitments policy is an attempt to impose on individual LDCs what could not be negotiated multilaterally.

Both criticisms are, in fact, right as far as they go. As soon as the U.S. invoked Article 19:9 against India, India initiated dispute settlement proceedings alleging violation of the MFN rule. Had the dispute settlement proceedings gone to conclusion, the U.S. could have lost the case. However, the conclusion that the U.S. should therefore modify its commitment policy seems to have been assumed too quickly.

The Indians (and other LDCs) maintain that under GATT Article I, the U.S. is, as a matter of GATT law, required to extend the benefits of a countervailing duty injury test to all GATT members whether or not they signed the subsidies code, much less whether or not they gave a subsidies phase-out commitment. The Indians' approach presents the classic "free rider" problem--a country

seeking the benefits of trade concessions negotiated between third countries while only contributing minimally itself to efforts to lower trade barriers. The LDCs, as a group, have for years taken a free ride. LDCs have, for example, managed to maintain tariff barriers as high as 200% while developing country's tariffs average well below 10%.

The only way to deal with the "free rider" problem is to meet it head on; to say, in effect, that the U.S. will insist on at least a degree of reciprocity (from the advanced LDCs, in any event). If any LDC chooses to assert GATT Article I rights, the only answer is "so be it." Under the GATT, the remedy for a complainant like India is to withdraw trade concessions--a remedy that is of little practical consequence since the India's of the world have given so few concessions to begin with. In other words, the policy message under the commitments policy was to have been "If an advanced LDC does not want to give a subsidy commitment, it will get no injury test; if what LDC wishes to bring a GATT case, their rights under the GATT are cast in terms of withdrawal of concessions. We are perfectly prepared to begin a process of unravelling trade concessions, on a bilateral basis, with that country in order to ensure a better reciprocity in trade concessions."

This sort of approach relies ultimately on the interest of LDCs in continued access to the U.S. market. For those LDCs with a limited interest in trade with the U.S. (e.g. India) it might not have yielded positive results. However, for those with a major stake in trade with the U.S. (Brazil, Mexico, Korea, Taiwan) the results would almost certainly be positive. The approach does, however, make for unpleasant negotiations. It is a price that is unavoidable.

The contention that the U.S. commitment policy is an effort to achieve something on a bilateral basis that could not be negotiated multilaterally is, as stated above, well-founded. The negotiators of the Subsidy Code would have much preferred a neat multilaterally agreed commitments policy. It was, however, not negotiable then and, in my opinion, not negotiable now. The commitments policy was a second best solution.

There are good reasons why the U.S. can do less multilaterally than it can hope to achieve on a bilateral basis with respect to a commitment policy. First, multilateral negotiations involve an LDC bloc response which tends to be more political, in a North-South context, than individual responses. Second, individual country interests differ. India exports no more than 6% of its GNP and the U.S. is not the primary export market (Europe and Japan are relatively more important to India). A Brazil or a Mexico, on the other hand, is looking to export led growth, with the U.S. being their single most important foreign market. The Indians can afford to block an LDC concession on the provisions of a multilateral code; a Brazil or a Mexico must, in the end, be far more accommodating bilaterally.

Senator DANFORTH. Thank you very much.

You say in your statement that there is an inherent conflict between the twin-pillars of GATT, MFN, and reciprocity. What does that mean?

Mr. WOLFF. That means that article 1 of the GATT is an unqualified obligation to give unconditional most-favored-nation treatment to all signatories. It is argued, and this is a very fine legal point, that this applies to the injury test in article 6 as well. I think there are arguments to be made on the other side, but it is a difficult legal case.

I would say that the United States is not without leverage with respect to foreign countries. It is a curiosity to me that when Pakistan is attacked and very vulnerable, and entirely dependent on our support, we come to a conclusion that not only should they be given military aid but if they want to use subsidies to take over some area of apparel trade that they absolutely require that because they are so weak.

Whereas if another country comes along and they are strong, we say, "Well, we don't want to offend them, so let's give them in the trade area, too." The leverage may come outside the GATT.

Senator DANFORTH. What does it mean when you say that one of the twin-pillars of GATT is reciprocity? Reciprocity has become a much discussed, editorialized about word in recent months.

Mr. WOLFF. It is really implicit, the whole nature of GATT is a balance of obligations.

Several articles talk about maintaining a mutually acceptable level of obligations and concessions. Article 2 is the tariff negotiating article, and it is MFN but you do not give a principal supplier a tariff concession unless he gives you something in return.

The GATT is really based on reciprocity, but I would say that it is a slightly different reciprocity historically, perhaps, than the one we are talking about or I take it you are addressing with your legislation.

I would say that you are referring to a reciprocity of results in addition to a reciprocity of bargained for concessions.

In other words, if two countries lower their tariff to, let's say, average tariffs between Japan and the United States and the Community of 4 percent, does that mean that we have reciprocity in terms of market access; not always. There are other things operating out there.

Senator DANFORTH. Reciprocity in results, what does that mean to you? It means to me a balance of exports and imports.

Mr. WOLFF. Not bilaterally, I would say.

With respect to Japan in general, if the Japanese, let us say, were in balance on trade globally, we had a terrible deficit with them, but they imported a lot of goods, including manufactured goods from Korea and Taiwan and a number of other countries, one might say, "We are selling machinery to Korea and Taiwan, and it all works out in the end in the multilateral system." That is not the case.

There is more of a problem and a question of reciprocity. I would not look for bilateral balancing by product.

Senator DANFORTH. I don't, that has nothing to do with I am after. What I am after is simply reciprocity of access, reciprocity of

opportunity for competitive products to get in in the various markets.

Mr. WOLFF. Your bill and Senator Heinz's bill are provoking a debate that needs to be held. It is a question that has to be examined. I would hope that it would halt a move toward protectionism abroad and here, rather than spur it. I suspect that it would cause a reconsideration that will be positive.

Senator DANFORTH. Senator Grassley.

Senator GRASSLEY. Mr. Chairman, I have no questions.

Senator DANFORTH. Mr. Wolff, thank you very much.

Mr. WOLFF. Thank you.

Senator DANFORTH. The subcommittee stands adjourned.

[Whereupon, at 12:35 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

STATEMENT TO
SENATE FINANCE COMMITTEE
SUBCOMMITTEE ON INTERNATIONAL TRADE
ON S. 958

Gary Clyde Hufbauer
Counsel
Chapman, Duff and Paul

February 11, 1982

Introduction

This statement is submitted on behalf of Strohmeyer & Arpe Company, Inc., the sole U.S. importer of montan wax produced in the German Democratic Republic (GDR, also known as East Germany). Montan wax has featured prominently in the recent annals of East-West trade. This wax is extracted from lignite of a special quality, and nature has deposited most of that lignite in the GDR. Throughout the western world, the only other commercial producer of montan wax is ALPCO, a U.S. company. ALPCO produces montan wax from lignite that contains much less wax than the GDR lignite. ALPCO also uses far more costly energy in its extraction process. For these and other reasons, ALPCO is a higher cost producer than the GDR.

Because of its cost disadvantage, ALPCO sought relief against imports of GDR montan wax under both the antidumping and market disruption provisions of U.S. trade law. In both instances, after exhaustive and spirited proceedings, relief was denied. 47 Fed.Reg. 3,579 (1982) (antidumping), and 47 Fed.Reg. 2,957 (1982) (§ 406). We submit that it would be manifestly unfair to disturb these settled findings through the adoption of new legislation. S. 958 would,

at the very least, enable ALPCO to reopen this case and subject Strohmeyer & Arpe to yet another round of litigation. Moreover, as presently drafted, S. 958 would ultimately give ALPCO monopoly control over the price of montan wax sold in the United States. Any price that ALPCO chose to set would have to be followed by the GDR, to the detriment of U.S. consumers.

Let me explain this problem. Since the GDR and ALPCO are the only commercial producers of montan wax in the western world, the artificial pricing standard in S. 958 would lead to an intolerable result: if GDR wax was sold in the United States at a lower price than ALPCO wax, ALCPO could petition and obtain a dumping duty to the extent of the price difference. Foreseeing this outcome, the GDR would simply set its prices by reference to ALPCO's prices. The GDR would become a "puppet monopoly" of ALPCO.

This monopoly pricing result would not differ a great deal if a third firm, located say in France, also produced montan wax. In that event, S. 958 would hold the GDR to the prices of the French producer. The only difference between the two situations is that, in a two-producer market, the U.S. producer would make the GDR its "puppet monopoly", while in a three-producer (or more) market, a foreign firm would control the "puppet monopoly".

This outcome radically departs from the original concept of the antidumping law. And the consequences of such a departure go far beyond montan wax. The antidumping law

was designed to prevent nations from exporting goods in which they do not have a competitive advantage. Conversely, the law was designed to permit nations to export goods in which they do have a competitive advantage. The law was not designed to make a foreign exporter the price slave of his U.S. or third-country competitors.

The Congress has criticized successive Administrations for subordinating the trade law to political expediency. Unfortunately, S. 958 would single out nonmarket countries and subject them to an expedient procedure -- namely it would require them to price their exports according to the price of some other exporter or the U.S. producer. This bill abandons any attempt to hold nonmarket producers to the standard of competitive advantage.

Some commentators have suggested that any nonmarket producer that undersells its U.S. or foreign competitors must harbor a secret intent to drive them out of business. The predicate for this suggestion is that underselling is somehow underhanded. In reality, underselling is part of the "magic of the market." How else can a new firm establish a market share? How else can an established firm ward off competition from substitute products? Just such considerations entered into the Polish pricing of golf cars and the GDR pricing of montan wax.

S. 958 labels all prices of nonmarket producers as inherently "artificial". This label ignores the fact that

many exports flowing from nonmarket producers to the U.S. market are identical to exports of the pre-World War II period, before the imposition of communist systems. Competitive advantage in such merchandise existed forty years ago, and it exists today.

S. 958 would disregard economic considerations and put the antidumping law into the deep freeze of East-West politics. Obviously, we are passing through difficult times in our relations with Eastern Europe. But the proper response is not to redesign the antidumping laws in a way that defies economic reality and creates vested interests that will surely survive any return to more agreeable political relations.

Nor is S. 958 needed to answer emergency circumstances. Other laws already allow the U.S. Government to defend our national security, or to make a political statement, by limiting exports, and to respond to the harmful impact of imports. Among such laws are the Export Administration Act of 1979, the National Security Amendment (§ 232 of the Trade Act of 1962), and the "escape clause" (§ 201 of the Trade Act of 1974). In addition, the "market disruption" provision (§ 406 of the Trade Act of 1974) was devised as a separate and less formidable "escape clause" procedure with special reference to the nonmarket countries. The fact that few petitioners have prevailed under § 406 speaks

to the merits of their complaints, not to the inadequacy of the remedy. Contrary to assumptions widely held, Eastern European countries are not generally engaged in the reckless capture of U.S. markets.

Background of Antidumping Law

The present law and regulations governing antidumping petitions filed against products from state-controlled economy countries evolved slowly over two decades. The traditional standard for establishing the existence of dumping is to compare foreign market value (i.e., the price at which the foreign merchandise is sold for home market consumption or for export to third countries) with the U.S. price (i.e., the price at which the foreign merchandise is sold to the United States).

The first departure from the traditional comparison in a dumping case involving a state-controlled economy country occurred in Bicycles from Czechoslovakia, 25 Fed.Reg. 6,657 (1960). In this case, the Treasury Department did not use Czechoslovakia home market prices or export prices, or even the constructed value in Czechoslovakia, to establish foreign market value. Instead, a "third-country" test was applied based on the price of similar merchandise produced in a non-state-controlled economy country. This approach has come to be known as "surrogate country" analysis. Surrogate country analysis represents one step in

the right direction and one step in the wrong direction. The step in the right direction was to calculate foreign market value on the basis of conditions in a market economy that resembles, in broad economic contours, the nonmarket nation. The step in the wrong direction was to use the actual prices of a competing third country producer, thereby opening up the possibility of a "puppet monopoly".

The de facto use of surrogate country analysis applied in Bicycles was codified by Treasury regulations in 1968. Regulation § 53.5, T.D. 68-148, 2 Cust.Bull. 307 (1968). The 1968 regulation was substantially adopted by Congress in the Trade Act of 1974, § 321(d), 19 U.S.C.A. § 164(c) (1976). This change was accomplished by the addition of § 205(c) to the Antidumping Act of 1921.

The Senate Finance Committee Report on the 1974 Act, S.Rep. No. 1298, 93rd Cong., 2nd Sess. 1974, reprinted in [1974] U.S. Code Cong. & Ad. News 7311, went a step further and suggested that the new section would allow the use of domestic United States prices as a determinant of foreign market value "in the absence of an adequate basis for comparison using prices in other non-state-controlled-economy countries."

There is no evidence that the Treasury used domestic United States prices as a determinant of foreign market value prior to 1974. In any event, the Treasury amended its regulations in 1976 to stipulate that United States

prices could be used. 41 Fed.Reg. 26,203 (1976). The use of United States prices was another step in the wrong direction, for it could lead almost automatically to a finding of dumping no matter what the competitive advantage of the nonmarket producer. After all, the U.S. producer -- whose prices would be used to establish foreign market value in the absence of any third country producer -- would only file a dumping petition if he was being undersold by the nonmarket producer.

This weakness was exposed in Electric Golf Cars from Poland, 40 Fed.Reg. 5,383 (1975), and that case was a prime catalyst in the adoption of the 1978 amendments to the Treasury regulations, 43 Fed.Reg. 35,262 (1978). In the Golf Cars case, after a Canadian producer went out of business, a mechanical reading of the 1976 regulations might have forced the Treasury to rely upon U.S. prices in determining the foreign market value of Polish golf cars. The result would have been a sure, and unfair, finding of dumping.

In its amended regulations the Treasury established the following hierarchy of approaches for establishing a surrogate country foreign market value:

1) the price at which such or similar merchandise of a non-state-controlled-economy country is sold in its home market or for export;

2) the constructed value of such or similar merchandise in a surrogate non-state-controlled-economy country;

3) the price or constructed value determined from any market economy country other than the United States; or,

4) the price or constructed value determined by sales or production of such or similar merchandise in the United States.

Of these methods, the approach that best carries out the original intention of the antidumping laws is constructed value in a surrogate non-state-controlled economy country. The constructed value approach was employed in both the Golf Cars and the Montan Wax cases. The constructed value method relies on data from the surrogate economy to establish unit costs for the physical factors of production actually used by the nonmarket economy in manufacturing the suspect merchandise. A constructed value analysis makes an honest attempt to estimate the costs, and therefore the competitive advantage or disadvantage, of the nonmarket producer.

The 1978 amended regulations also provided guidelines for selecting a surrogate country that best resembles the state-controlled-economy country. The Department claimed that past surrogate country selections focused on "a country that is most like the exporting country." 43 Fed.Reg. 35,263 (1978). The Department noted that the standard

had not been clearly articulated and the 1978 regulation sought to "provide such a standard." Id.

Prior to the 1978 amendments, the Treasury normally selected a West European country using a pool of criteria, including GNP per capita, geographic proximity, the level of industrial development, and so forth. The 1978 regulations were intended to create greater certainty in the selection of a surrogate country by placing greater weight on GNP per capita and similarity of industrial development as deciding characteristics. Unfortunately, the 1978 changes have not yet resulted in the publication of a list of preferred surrogate countries by the Commerce Department.

Problems in the Antidumping Law

Foremost among the problems in the present antidumping law, as it applies to East-West trade, is the use of the price of such or similar goods sold by market economy countries to obtain the fair market value for the nonmarket producer. The prices of a third country producer may bear no relationship to the costs or prices of the nonmarket country producer. Even worse, this procedure enables a third country producer to set a floor on the prices charged by the nonmarket economy country. Any competitive advantage that the nonmarket producer has may be washed away in this "Alice in Wonderland" exercise. S. 958 would simply enshrine this approach in all cases and eliminate the conceptually

better approach of using constructed value. S. 958 would require that the nonmarket producer be held to the standard of the lowest price of a market producer, or perhaps some average of prices of market producers.

Under the artificial pricing formula in S. 958, in cases in which there is only a nonmarket producer and a U.S. producer, the law would guarantee the U.S. producer a "puppet monopoly". The nonmarket producer would be forced to sell his merchandise at the U.S. producer's price, or pay a dumping duty. Quite likely, the U.S. producer would pull that price inexorably upwards. Such a result would be certain in the case of montan wax from the GDR for one, and in the case of golf cars from Poland for another. Many specialized goods sold in this country by nonmarket economy firms may be produced by only one or a very few U.S. firms. In each and every situation of this sort, the U.S. producers would have an incentive to bring an "artificial pricing" petition. Indeed, they would be foolish not to.

Furthermore, there are undoubtedly other cases in which goods are sold in the U.S. market by a nonmarket producer, by a single (or very few) U.S. producers, and by a higher-priced free market producer or producers abroad. In these cases, the U.S. producers could force the nonmarket producer to increase his price at least to the level of the lowest, or possibly to some average level, of the prices of nonmarket producers. In short, this bill would foster a kind of administered

price-fixing that runs directly contrary to U.S. notions of competition and to the spirit of U.S. antitrust laws. As a result of this danger, we recommend that S. 958 be amended to make constructed value the preferred option in all cases involving goods from nonmarket economy countries.

The GAO likewise endorses a constructed value approach in all nonmarket economy antidumping cases.[1/] The GAO report notes the following advantages of the constructed value method (p. 23):

- It is a fair way to permit a nonmarket economy producer to attempt to show it has economic efficiencies.

- It reflects the actual production factors used by the nonmarket producer.

- It provides costs that can be valued in U.S. dollars.

- It reduces the administrative problems associated with gaining the cooperation of surrogate producers and making the necessary adjustments for differences in production techniques and scale of operation.

1/ "U.S. Laws and Regulations Applicable to Imports from Nonmarket Economies Could Be Improved" (ID-81-35).

We recommend that the Department of Commerce take the following steps to mitigate its administrative burden in applying the constructed value approach:

- Publish a list of preferred surrogate countries. An advance selection process will minimize much of the time-consuming debate that now surrounds the selection of the surrogate country in each case.

- Publish regulations on cost allocation methods for investigations involving merchandise produced as a co-product or by-product.

- Early in the investigation, identify and disclose the physical factors that need to be valued in the surrogate country (except for those physical factors which cannot be identified for legitimate business secrecy reasons).

- Place the burden squarely on the petitioner and the respondent to produce evidence on unit costs for those physical factors in the surrogate country. In other words, the Department of Commerce would, for the most part, merely assess the unit cost data; it would not also collect the unit cost data.

Finally, we feel that the Subcommittee should provide legislative direction so that the Commerce Department can, in some cases, use home market and export prices of nonmarket countries to establish foreign market value. This merely requires the progressive designation of erstwhile nonmarket countries (such as Yugoslavia) as market countries for the purposes of the antidumping law, and the estimation of appropriate exchange rates for those countries. These are not such formidable tasks. Scholarly studies regularly report on the intrusion of market forces into state-controlled economies. The CIA implicitly estimates exchange rates for nonmarket countries. A joint study of the United Nations, the World Bank and the University of Pennsylvania is attempting to value various national currencies, including those of some nonmarket countries, by the use of a purchasing power analysis. The Commerce Department could draw on all these sources in its efforts to harmonize the application of the antidumping laws to both market and nonmarket economies.

In short, the Subcommittee might well direct its legislative efforts both toward procedural reform of the constructed value approach and toward the progressive harmonization of the analytic methods applied to market and nonmarket economies. In the meantime, legislative initiatives should not torpedo the evolution of a system that is designed to preserve competitive advantage.

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

COMMITTEE ON FINANCE UNITED STATES SENATE

EFFECTIVENESS OF SECTION 301 AND THE SUBSIDIES CODE

FEBRUARY 11, 1982

STATEMENT OF NOEL HEMMENDINGER

I am Senior Partner of the Washington law firm of Arter Hadden & Hemmendinger. This statement is submitted on my own behalf and not on behalf of my partners and associates, clients, or any group that I am connected with.

My views have been nourished by work as a practitioner on behalf of Brazilian, Colombian and Mexican interests. This statement has been prepared without consultation with any such interests and in no respect purports to represent their views.

It is not altogether accidental that I submit this statement on my own behalf. I present an unconventional view of the policy and procedure to achieve agreements under the Subsidies Code with developing countries, provided for in §701(b) of the Tariff Act of 1930 as amended by the Trade Agreements Act of 1979, and the relevant provisions of Article 19 of the Subsidies Code. This Statement is also relevant to Senator Heinz's Bill, S. 1511, and to proposals recently made by Senator Heinz along the same lines, to tighten the standards under which countries are recognized as countries under the agreement and entitled to the injury test under the U.S. law.

I submit that the policy embodied in these provisions has proved to be unsuccessful, that it is leading to the denial of the injury test to countries with which the United States can and should enjoy cordial trading relations, and that this consequence is not in the best interest of the United States. I suggest that the policy be terminated by an amendment in precisely the opposite direction of Senator Heinz's proposal: namely, to afford the injury test without discrimination to signatories of the Subsidies Code and not to exact any promises outside of the Code itself.

That the policy is unsuccessful is evidenced by the fact that despite the inducement of the grant of the injury test, comparatively few developing countries have made bilateral agreements with the United States and signed the Subsidies Code, and the Executive has come under criticism from members of this Committee for granting the status of "country under the agreement" too readily and on the basis of soft assurances on the part of the prospective signatories. It is no doubt true that the commitments exacted from certain countries have not lived up to what was expected by members of this body and the original negotiating goals of USTR. A natural reaction is to make those negotiating goals statutory and put some steel into the negotiators. A more appropriate conclusion, however, is that there were good reasons of foreign economic policy why the Executive made the agreements it did and that something is wrong with the policy.

In my opinion, it was a mistake from the beginning to use the grant of the injury test as a bargaining tool. We could very well have granted it without reservation and if my recollection is correct, a policy decision to do this was nearly made in connection with the 1974 Act. After all,

Article VI of the GATT represented a policy from which the United States was excepted under the Grandfather Clause not because of any substantive objection, but because the GATT was an Executive Agreement and the Countervailing Duty Law was a statute which could not be altered by it. It has always seemed to me that it was morally and politically incumbent upon the Executive to seek to conform the United States law to the GATT at the earliest opportunity, and it is unfortunate that the opportunity of trade legislation was not utilized for this purpose. Nevertheless, given the situation when we entered into negotiation of the Subsidies Code, it was not unreasonable to require that the parties sign the Code to obtain the injury test. The Code was negotiated at length, with many countries participating, including some developing countries, and represented a consensus as to the principles involved. The United States went further and wrote in the provision which requires that countries desiring to be co-signatories with the United States enter into further undertakings not provided for by the Code.

That was a mistake because it was led to highly discriminatory results and because it was offensive to a number of important countries that have considered it an intrusion into their own affairs. It was also inconsistent with the U.S. commitment to MFN treatment in Article I of the GATT and various commercial treaties. The Subsidies Code itself recognizes the legitimacy of domestic subsidies and the legitimacy of export subsidies on the part of developing countries. For the United States

to exact undertakings by the signatories that they will dismantle their export subsidies as a price for the injury test is regarded as an arrogant exercise of power in an area which is of great moment to those countries, but of comparatively small importance to the United States. Indeed it is in the interest of the United States itself to grant an injury test because the limitation of imports, subsidized or not subsidized, in the absence of any showing of injury to an American industry makes no sense for the United States itself.

After all, if a foreign government is prepared to confer on the American consuming public some benefit through the operation of a subsidy, why should we complain? What business is it of the American Government to prevent any American consumer from buying something more cheaply from abroad than he can at home? The only reason to close our borders to less expensive manufactures from overseas, is injury to an industry that has the potential to compete against imports.

The position adopted by the United States amounts to saying that we know better than the policy makers of developing countries themselves what is good for them, we know that export subsidies are bad and we will use our power to require them to follow the right course. This completely ignores not only the provision of the Subsidies Code, but a body of opinion among development economists that export subsidies are a legitimate strategy on the part of developing countries in certain circumstances on the same kind of grounds that have justified protection for infant industries. Whether they are right or not at a particular moment is beside the point. The fact is that the use of

such subsidies is an important element of the total economic strategy of some major countries, countries with which the United States has enduring relationships. For the United States to insist that these policies be altered if they will trade with the United States is perceived as arrogant, and in my opinion, correctly so. It is also short sighted. It does not truly reflect the interest of the United States.

I further suggest that the distinction which is embodied in U.S. laws since the Trade Act of 1974 and which is deeply ingrained in the U.S. thinking, that we are for fair trade and against unfair trade, is an oversimplification which has had its value but has also had its unfortunate consequences. If one considers that massive export subsidies are an alternative to devaluation of the national currency, and for that reason a devaluation can permit a country to sell at the same prices in the United States without subsidizing, then I suggest that something is wrong with the formulation of "fair" and "unfair." Petitioners have been known, for instance, to complain to the U.S. Government that foreign countries evaded a countervailing duty finding by devaluing. In fact, they were doing exactly what the principle of the countervailing duty law contemplates, because this is a case where you can do in one way what you cannot do in another.

The fact is that all trade, including that of the United States, has been conditioned over the years by governmental interventions and that to try to use this as a test for what is fair and unfair leads simply to a morass. Trade questions, like many other affairs of people and states, do not lend themselves to determination by simplistic slogans. Rather than tightening up the laws to further limit the discretion of the Executive, I am convinced that it is necessary that the Congress move in the opposite direction, and permit the exercise of greater discretion to deal with the issues which foreign economic relations present in all their complexity.

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consumers CWT for world trade

STATEMENT TO THE SENATE FINANCE COMMITTEE

SUBCOMMITTEE ON INTERNATIONAL TRADE

February 11, 1982

Hearing to review the operation of Section 301 of the Trade Act of 1974, the GATT Subsidies Code, and the Common Agricultural Policy of the European Communities, February 11, 1982

(Statement submitted by Consumers for World Trade, for inclusion in the printed record of the hearing.)

Consumers for World Trade (CWT) is a national, nonprofit, membership organization, established in 1978. CWT supports expanded foreign trade to help promote healthy economic growth; provide choices in the marketplace for consumers; and counteract inflationary price increases. CWT believes in the importance of increasing productivity through the efficient utilization of human and capital resources. CWT conducts its educational programs to keep American consumers informed of their stake in international trade policy and speaks out for the interests of consumers when trade policy is being formulated.

Consumers for World Trade (CWT) welcomes this opportunity to comment on some of the issues raised in the Subcommittee's press release of January 20, 1982.

CWT supports the principle of equal access - to foreign markets for U.S. exporters and to the American market for foreign exporters. This is a fundamental principle of the General Agreement on Tariffs and Trade (GATT) and of sensible trade policy.

CWT does not believe that equal opportunity can be enforced by unilateral trade restrictions on our part. Every country maintains restrictions on imports, including the United States. Most countries, including the United States, resort to direct or indirect export subsidies. Where these do not square with the GATT, we and other GATT parties have rights of redress. If we feel that GATT procedures are too slow, we can enter into direct discussions and negotiations with our trading partners. Unilateral retaliation - in the form of U.S. trade restrictions and export subsidies - imposes heavy costs on American consumers, importers and taxpayers and almost always carries with it serious risks of counter-retaliation. Trade wars do not benefit anybody and can end up by injuring the American interests we are trying to protect.

These considerations are particularly relevant to the agricultural trade issues that have arisen with Europe and Japan. First, it is important to keep these issues in perspective. The EC and Japan are the American farmer's most important foreign markets, accounting for

9 and 6 billion dollars, respectively, of our total agricultural exports of some $40 billion. Some of these exports are vulnerable to counter-retaliation if we were to retaliate unilaterally against European wheat export subsidies or Japanese import restrictions on beef and oranges.

Secondly, even if we succeeded in rolling back subsidized European wheat exports to the level of a recent representative 3-year period (as provided in the GATT subsidies code), this would be of little value to the United States if the EC decided to solve its problem by feeding the excess wheat to livestock, and correspondingly to reduce its feedgrain imports from the United States. Clearly, what is called for in this case is restraint on support prices in the Community to avoid a further build-up of surpluses. We should encourage the substantial body of opinion within the Community that seems to have come to the same conclusion, for both trade policy and budgetary reasons.

Finally, it is useful to keep in mind that the U.S. record in this field is not unblemished, either. We maintain stringent import restrictions on dairy products and beef and have recently raised the level of protection on sugar for which we now operate what amounts to a variable levy system. We subsidize grain producers by deficiency payments and export peanuts and dairy products below domestic prices. In the case of dairy products, we have finally been forced to begin the painful but necessary adjustments to reduce surplus production.

Distortions to agricultural trade everywhere are rooted in domestic support policies which are not easy to change. CWT favors the gradual removal of these distortions on a basis of reciprocity and mutual accommodations. But we believe that unilateral retaliatory measures, in the form of U.S. export subsidies or import restrictions, are more likely to be harmful than helpful in this process.

Before The

SENATE FINANCE SUBCOMMITTEE

ON INTERNATIONAL TRADE

STATEMENT OF WILLIAM KITCHELL INCE, ESQ.

Introduction

The Hawaiian Sugar Planters' Association (HSPA) is a voluntary, non-profit, incorporated association for the maintenance, advancement and improvement of the sugar industry in Hawaii. Plantation members of HSPA are those companies in Hawaii engaged primarily in the business of raising sugarcane and manufacturing sugar from it. An experiment station for sugar-related research is the largest of the Association's programs.

Since 1948, all the raw cane sugar produced in the state of Hawaii has been refined and marketed by the California and Hawaiian Sugar Company ("C and H"), which owns and operates the largest sugar refinery in the world at Crockett, California. C and H is an agricultural cooperative marketing association, owned by the 14 sugar producing companies in Hawaii that are also members of HSPA. C and H also serves as refining and marketing agent for the more than 400 independent sugarcane farmers in Hawaii.

All of the sugar marketed by C and H is consumed in the United States.

The production of sugar is the third most important revenue-producing industry in Hawaii (tourism is first; military expenditures, second). The Hawaiian sugar industry employs 9,100 people directly and indirectly supports another 20,800 jobs. The C and H refinery at Aiea employs about 75 persons,

and the Crockett, California refinery employs about 1,500.

HSPA is vitally concerned with the operation of Section 301 of the Tariff Act of 1930 because it has joined in the Great Western Sugar Company petition under Section 301 against the EC sugar export subsidy scheme (Docket No. 301-22). In 1981, the Hawaiian sugar industry lost $83.5 million due to depressed prices caused by EC export subsidies. HSPA thus has a significant stake in the effectiveness of Section 301 in combatting export subsidies that harm U.S. interests.

I do not intend to address the merits of our case here - that is being done through the process administered by the 301 Committee and the U.S. Trade Representative's Office. What is of concern here is the 301 procedure, and how effective it is proving to be in operation.

Effectiveness of Section 301

Section 301 is designed to facilitate, for U.S. business interests, the dispute settlement procedures provided for in the international Code on Subsidies and Countervailing Measures (Subsidies Code). The Code was negotiated in Geneva during the last round of multilateral trade negotiations (Tokyo Round), and the United States made several important concessions in return for other countries' agreement to the Codes' provisions.

Among other things, the Subsidies Code establishes specific time limits for the stages leading to a resolution of any dispute under the Code.

The first stage of the dispute settlement process calls for consultations between the country complaining of a subsidy and the country allegedly granting the subsidy. The Code provides that such consultations must be entered into "as quickly as possible". In the case of an export subsidy, the consultations are designed to last no more than 30 days. If no mutually agreeable solution is achieved, then either party can refer the dispute to the Code Committee for conciliation. The conciliation process also lasts 30 days; if not resolved at that time, the aggrieved party can ask for a panel of experts to review the facts of the dispute. A panel must be established within 30 days, and the panel must present its findings to the Code Committee within 60 days. The Committee then has 30 days to make its recommendations on a solution to the dispute.

These deadlines are an important and integral part of the Code, for without adherence to them, there is no real prospect of an effective and timely resolution of a dispute sought to be settled under the Code. If export subsidies are allowed to continue unchecked for even a few years, pending a long drawn-out negotiating process, even an otherwise just or effective solution will often occur too late to remedy the serious harm that has already been caused.

The Section 301 procedures are designed to parallel the Code's dispute settlement mechanism. For example, the U.S. Trade Representative must recommend to the President

what action, if any, should be taken in the case of an export subsidy within 7 months after the initiation of an investigation. Thus the 301 process "tracks" the dispute settlement process under the Code, a procedure that should work, assuming the parties to the Code honor their commitment to its provisions.

Unfortunately, in the case of EC sugar subsidies, the European Community has not lived up to its commitment. The United States requested consultations with the EC in early October, 1981 and yet only recently have the EC agreed to them. Obviously, the EC is flagrantly ignoring the Code requirement to hold consultations "as quickly as possible" after they are requested. Meanwhile, EC sugar subsidies are continuing unabated, and even, if reports prove true, are increasing in size and effect.

Neither the Code nor Section 301 specifically provides sanctions for a party's refusal to negotiate, but they should. It is unlikely that an opportunity will present itself in the near future to add such sanctions to the Code. However, Congress can certainly provide for such sanctions by amending Section 301, and we urge that serious consideration be given to doing just that as soon as possible. In fact, under Section 301's present terms it could be argued that the authority for such sanctions already exists. However, in order to make the intent of Congress clear, some amendment is probably desirable. The sanctions can take the form of retaliation that is already provided for in Section 301[1/] - the only difference will be

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1/ Section 301, Tariff Act of 1930, 19 U.S.C. 2411.

authorization to retaliate at an earlier stage in the proceedings whenever it becomes clear that the other party to the dispute is ignoring its obligations to negotiate in a timely manner. Congressional action is necessary to give a clear signal to our trading partners that the United States will not allow them to ignore their international obligation with impunity.

Effect of EC Subsidies On U.S. Domestic Prices

Much has been said, in this hearing and elsewhere, of the effect of EC sugar export subsidies on U.S. exports. But that is only part of the story, and not the most important part, at least as far as HSPA is concerned. Certainly, we should be concerned about our trading partners' subsidies that inhibit or prevent us from competing fairly in export markets. We should be vitally concerned about our balance of trade. However, we should not be so vitally concerned that we overlook the effect that EC sugar subsidies have on our own domestic market. For if we cannot protect our domestic industry from injury in its own domestic market, very soon there will be no industry to engage in exporting.

Article 8 of the Subsidies Code condemns subsidies that, inter alia, cause "serious prejudice" to the interests of a signatory. HSPA has demonstrated to the 301 Committee that this phrase includes price-depressing effects in the U.S. market caused by subsidized EC exports in the world market (i.e. outside the United States). The importance of this point cannot be overstated, for the following reasons:

(1) Historically, the United States is a net importer of sugar, relying on imports to supply as much as 45 percent of domestic consumption;

(2) As a consequence, the U.S. domestic price for sugar is directly governed by the world price for sugar - the price for sugar that is freely traded in world markets;

(3) The dumping of EC surplus sugar on world markets by the use of subsidies depresses the world price and thus depresses the U.S. price.

The Hawaiian sugar industry sells its product only in the United States; it does not export. Therefore, it is totally dependent on the U.S. price for sugar in either making a profit or incurring a loss (as it did in 1981). The industry is an efficient producer, with an average 1981 cost of production of 19.5 cents per pound. If the world price depresses the U.S. price for sugar, the Hawaiian sugar industry is the loser. This happened in 1981, and is happening today, with the U.S. price at 17.2 cents per pound despite duties and fees of about 5 cents per pound. And when this price-depressing effect is caused by EC subsidies, the industry's only recourse is through Section 301 and the Subsidies Code.

There are already both a countervailing duty order and an antidumping order in effect with respect to sugar imported from certain EC countries. As a result, there are little or no imports from the EC. Thus, Article 8 of the Code and Section 301 action is the only means of protecting the Hawaiian industry from the effects of EC sugar subsidies. How effective it is remains to be seen. So far, the 301 process has failed miserably in bringing about even the hope of a solution.

Respectfully submitted,

William K. Ince

February 25, 1982

Section 301 and Subsidies Code Hearings Before the
Subcommittee on International Trade
Committee on Finance, United States Senate

Statement of

Charles R. Carlisle, Vice President
St. Joe Minerals Corporation

On Behalf of the

Ad-Hoc Labor-Industry Trade Coalition
(Group of 33)

February 11, 1982

Introduction

My name is Charles R. Carlisle. I am Vice President of St. Joe Minerals. I am accompanied by Peter Buck Feller, partner in the law firm of McClure and Trotter and by Stanley Nehmer, President of Economic Consulting Services Inc., both of Washington, D.C.

We are here on behalf of the "Group of 33", the name which has been applied to an ad hoc coalition of 33 trade associations and labor unions which are deeply concerned about the proper implementation of the countervailing and antidumping duty statutes and other legislation dealing with unfair trade. Although we have a commonality of interest and purpose, not all of our member groups concur in all of the details of the positions taken by the group. A list of our members is attached.

Our group advised both the Executive Branch and the Congress during the negotiation of the Subsidies and Antidumping Codes in 1978 and 1979, and in the development of implementing legislation in 1979.

We supported the MTN and the Trade Agreements Act of 1979, and we feel that we helped to develop the consensus in this country necessary to their adoption. We did so because we were convinced that the implementation of what was negotiated in Geneva would represent a giant step forward in providing American industry and labor with fair and effective recourse to our unfair trade statutes.

Commitments for effective implementation were made to industry and labor as part of the development of the national consensus that resulted in Congressional approval of the Geneva negotiations and the passage of the Trade Agreements Act of 1979. Some of us have been disappointed with events since. We fear that there is being lost the critical importance of developing public support for trade policy and of maintaining that support by actions that are widely perceived to be consistent, fair, and in accordance with previous commitments. Put another way, this means emphasizing the "rule of law" and predictability in trade cases, and the deemphasizing of foreign policy factors.

Implementation of Subsidies Code and Countervailing Duty Statute

Certainly no one can disagree that there is a need to reduce subsidies (as well as dumping) in international trade. These practices clearly distort trade and investment patterns. Export subsidies, of course, are inherently protectionist. Our Government invested much time and effort in

the negotiations which led to the present Subsidies (and Dumping) Codes. Congress itself was engaged for many months in drafting legislation that would provide for effective implementation of these codes. But what was negotiated in Geneva and what Congress passed into law will be meaningless unless there is proper enforcement on the part of the United States.

In this regard, the question of securing meaningful commitments from developing countries to eliminate their export subsidies as a prerequisite for receiving an injury test by the U.S., was a major issue before the Trade Agreements Act was passed in 1979. The Executive Branch assured industry and labor that developing countries would be required to make commitments to phase out their export subsidies before they would be accepted as a "country under the Agreement".

What was the nature of these commitments? How were they conveyed to industry and labor? First of all during meetings of the Industry Sector Advisory Committees categorical statements were made by our negotiators, and this is on the record, that meaningful commitments to phase out export subsidies would be made by developing countries before they would be accepted by the United States under the Subsidies Code. On April 27, 1979 Ambassador Alonzo L. McDonald, then Deputy Trade Representative and head of the U.S. MTN Delegation, told the Trade Subcommittee of the House Ways and Means Committee that: "For the United States

overall, the benefits [of the Subsidies Code] include an obligation by foreign governments to eliminate export subsidies completely." In an article published in Law and Policy in International Business in 1979 the two key U.S. negotiators of the Subsidies Code, Richard Rivers, the former General Counsel of the Trade Representative's office and his assistant, John Greenwald, noted that "because of the Subsidies Code, the LDCs will...accept discipline over export subsidies in the form of phase-outs of their programs."

The precise meaning of these broad commitments was discussed at length during the private-sector advisory process. According to statements made during the negotiations by Administration spokesmen, flexibility might be accorded LDCs in adjusting to the Code's requirements over a reasonable period of time, say five years, but the fundamental obligation would remain intact and would immediately be embraced. Specifically, it was stressed that developing-country signatories would at the outset be expected to agree (a) not to extend their export subsidies to other products; (b) not to raise export subsidies on any product beyond existing levels; and (c) to eliminate export subsidies across the board -- although, for products in which a case could be made for continued subsidization on grounds of "developmental needs," a timetable for phasing out those measures over time might be arranged. (Export subsidies,

however, would have to be eliminated immediately on labor-intensive products, or others in which the exporting country is already competitive.)

Unfortunately neither the preceding Administration nor the present Administration has lived up to these commitments.

The first major step in departing from the commitments made occurred with regard to accepting Pakistan as a country under the Subsidies Code. The announcement with regard to Pakistan came just 48 hours before a final determination was to be issued in a countervailing duty case involving subsidized imports of cotton textiles from Pakistan. For the domestic petitioners in a case which had already been underway for nearly two years, it meant that an entirely new investigation would have to be undertaken to prove injury to the U.S. industry.

We protested the action taken to accept Pakistan under the Subsidies Code. We pointed out that the "commitment" made by Pakistan, as stated in its letter to GATT adhering to the Subsidies Code, "to ensure that the export incentives that (Pakistan) provides are consistent with its development and competitive needs," was effectively devoid of meaning. Developing countries habitually defend all of their policies as being "consistent with their development and competitive needs." It is doubtful, we said, that any country's export subsidies programs could be constrained by a broad assurance of the kind Pakistan had given, as a result of the

acceptance by the United States of Pakistan under the Subsidies Code. Further, we pointed out that by accepting this "assurance" from Pakistan without requiring any standstill or phase out agreements that would give it effective meaning, the Administration was sending an unfortunate signal to developing countries: the United States will tolerate LDC's existing export subsidies if they will merely give vague assurances of the kind Pakistan had just given.

We also pointed out that the terms of Pakistan's accession to the Subsidies Code could deal a severe blow to the principle of LDC "graduation" that was developed during the MTN. U.S. negotiators had been under explicit instructions to obtain agreement by developing countries to this principle, under which special and differential treatment would progressively be phased out over time as individual LDCs become more developed. The U.S. position was that such a transition is essential to the integrity of the trading system and must involve the assumption by LDCs of further obligations within the system, not simply the unilateral reduction of benefits accorded them. In reply we were assured, and so were members of the Congress including members of this Subcommittee, that the action taken with regard to Pakistan was not a precedent for similar actions with regard to other developing countries.

Not long after that a new Administration took office in Washington and in the face of previous refusal to accept India as a country under the Subsidies Code, the present Administration accepted India without that country making any more meaningful commitments than had its neighbor, Pakistan. We think the key element of the Indian "commitment" is its statement entered into with the United States: "It is the Government of India's policy to reduce or eliminate export subsidies whenever the use of such subsidies is inconsistent with its competitive or development needs." Once again a developing country has picked up the language of Article 14.5 of the Subsidies Code that makes it the sole arbiter of whether or not it is in compliance with its "commitment."

Our group was told, and probably others as well, that India had to be accepted as a country under the Subsidies Code because otherwise the case which it had brought against the United States under GATT would have been lost by the United States and that we would have been found to be acting inconsistently with our GATT obligations. Needless to say, India pointed out that the United States had granted "country under the Agreement" status to others under terms equivalent to those offered by India. Here is the Pakistan precedent coming home to roost.

The present Administration's action to accept India under the Subsidies Code was both unnecessary and extremely

unfortunate. This action, together with that in the case of Pakistan, as well as another flagrant case involving Korea which I shall mention in a moment, definitely undermines the commitments policy with regard to the Subsidies Code that had been promised and indeed expected in the light of those promises to U.S. labor and industry.

Article 19.9 of the Subsidies Code expressly permits a country to refuse to apply the terms of the Code to any country. We understand that the U.S. negotiators of the Subsidies Code clearly stated their intention to invoke this provision if a developing country refused to grant a satisfactory commitment with regard to phasing out its export subsidies. India argued that Article I of GATT requires the United States to treat all signatory countries in a non-discriminatory manner. In the case of the Subsidies Code, this would mean extending the benefits of a countervailing duty injury test to all GATT members, even if they did not provide a commitment to phase out their export subsidies. Yet, the U.S. could have argued that the Subsidies Code was an elaboration of Articles VI and XVI of GATT and that if there was any inconsistency with other provisions of GATT, the Subsidies Code prevails.

Assuming that India had won its case in GATT, its remedy would have been to withdraw trade concessions. There would be no need for the U.S. to modify its policy. India's remedy, however, was absolutely devoid of practical effect,

because that country had given so few concessions to begin with. The United States should have been prepared to accept the loss of the case in GATT and proceed along the regular GATT process to negotiate the withdrawal of trade concessions by India. In practical terms the United States would have lost little in that process, but would have gained considerable support for its policy that in order for a developing country to get the injury test in countervailing duty cases, it must agree to phase out its export subsidies.

It is so important for the Subcommittee to recognize that the only major leverage that the United States had in the negotiation of the Subsidies Code, and perhaps in the entire MTN, was the granting of an injury test in countervailing duty cases. Yet the actions which have been taken to date in accepting countries under the Subsidies Code without meaningful commitments is effectively giving away that important leverage without receiving anything meaningful in return.

We would like to comment on the acceptance of the Republic of Korea as a country under the Subsidies Code. Korea was accepted by the United States as a "country under the Agreement" based on assurances that its export subsidies were not materially inconsistent with the Subsidies Code and its illustrative annex of export subsidies. Insofar as we have been able to determine, the United States never

examined in detail the subsidies practices of the Korean Government before it accepted Korea as a country under the Subsidies Code. Only more recently in November 1981 did the American Embassy in Seoul send an unclassified airgram which details the export subsidy practices of the Korean Government. A copy of this airgram is attached to our testimony.

The American Embassy concludes that "it does not appear that Korea is a heavy subsidizer of exports, by developing country standards, nor does it appear that Korean practices are in violation of the new MTN Code on Subsidies and Countervailing Measures which it has joined." We would suggest to the members of the Subcommittee that they study this airgram from the American Embassy to see if they agree with the Embassy's conclusion regarding Korea's compliance with the Subsidies Code and that it is not a "heavy subsidizer of exports." In our judgment the airgram clearly indicates not only that the Korean Government has comprehensive export subsidies, but also that the Executive Branch tolerates these practices by accepting Korea as a country under the Subsidies Code.

Finally, we want to call to the Subcommittee's attention the fact that Mexico is currently seeking an injury test from the United States. We would sincerely hope that the U.S. will secure meaningful commitments from Mexico to phase out its multitude of subsidies before according Mexico the status of a country under the Subsidies Code with its attendant injury test in countervailing duty cases.

Options and Remedies

Against this background the important question that arises is what can be done to repair the damage that has already been done? There are several options open to Congress and/or the Executive Branch.

First, the Executive Branch can reverse its course and refuse to accept any further developing countries under the Subsidies Code unless meaningful commitments to phase out export subsidies are obtained. If this course were followed, we would recommend that the accession should be in terms of "provisional application" as was more recently done in the case of New Zealand and Australia. This would permit the removal of the country from the application of the Subsidies Code by the United States in the event of its failure to live up to its commitments.

Second, the Administration can decide to renegotiate the Subsidies Code. Clearly this would be a major undertaking and its chances of success are minimal.

In our judgment the first option will not be accepted by the Executive Branch, based on what we have seen to date, and the second option, even if acceptable to the Executive Branch, will not be acceptable to our trading partners. That leaves the only viable and realistic option open to the United States if it is to bring some meaning to the commitments made to industry and labor in return for their support of the entire MTN package. This option is S. 1511, the bill

introduced by Senator Heinz to put into law the requirement paralleling the commitments that had been made. The Group of 33 strongly supports the enactment of S. 1511. It clearly provides a procedure for securing meaningful commitments if the U.S. is to accord the injury test in countervailing duty cases and it provides for removing a country from this right if the commitments made are not lived up to.

We need to urge upon the members of the Subcommittee that the matter before you is a most serious one. We urge the favorable reporting by the Subcommittee of S. 1511.

GROUP OF 33

Amalgamated Clothing & Textile Workers Union, AFL-CIO
American Apparel Manufacturers Association
American Federation of Fishermen
American Footwear Industries Association
American Pipe Fittings Association
American Textile Manufacturers Institute
American Yarn Spinners Association
Bicycle Manufacturers Association
Cast Iron Soil Pipe Institute
Clothing Manufacturers Association
Copper and Brass Fabricators Council, Inc.
Industrial Union Department, AFL-CIO
International Ladies Garment Workers Union, AFL-CIO
International Leather Goods, Plastics & Novelty Workers Union, AFL-CIO
Lead-Zinc Producers Committee
Luggage & Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association
Metal Cookware Manufacturers Association
National Association of Chain Manufacturers
National Association of Hosiery Manufacturers
National Cotton Council
National Handbag Association
National Knitted Outerwear Association
National Knitwear Association
National Outerwear & Sportswear Association
Northern Textile Association
Scale Manufacturers Association, Inc.
Synthetic Organic Chemical Manufacturers Association
Tanners Council of America, Inc.
Textile Distributors Association
United Food and Commercial Workers International Union, AFL-CIO
Valve Manufacturers Association
Work Glove Manufacturers Association

AIRGRAM 7810163-0760

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US Mission Geneva
US CINCD Paris

FROM: AmEmbassy Seoul

DATE: NOV 1 1981

E.O. 11652: N/A
TAGS: ETRD, KS, MTN, GATT
SUBJECT: Korean Government Support for Export Industries

REF: 80 Seoul A-25

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SUMMARY: This airgram up-dates the information of our previous reports on Korean government support for export industries. As described in reference, exports are the lifeblood of the Korean economy, and the ROKG employs a wide variety of techniques to support the export sector, including financial support, tariff incentives, tax benefits, and other measures--not the least of which is strong and sustained high-level attention. Exporters enjoy a privileged status and a relative freedom from restrictions in an otherwise tightly controlled economy. Upon close examination, however, it does not appear that Korea is a heavy subsidizer of exports, by developing country standards, nor does it appear that Korean practice are in violation of the new MTN Code on Subsidies and Countervailing Measures which it has joined. End Summary.

Annex

Table 1 - Terms for Short-Term Won Currency Export Loans
Table 2 - Terms for Short-Term Foreign Currency Loans for Overseas Construction and Services
Table 3 - Terms for Short-Term Won Currency Loans for Export of Agricultural and Fishery Products

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DRAFTED BY	DRAFTING DATE	PHONE NO.	CONCURRENCES / CLEARANCES	APPROVED BY
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Introduction:

The purpose of this airgram is to present, to the extent possible, a complete and straightforward picture of the various means by which the Korean Government supports the export industry through special incentives and subsidies. It is hoped that this information will be useful to Washington agencies in judging Korea's compliance with the MTN Code on Subsidies and Countervailing Measures, to which Korea became a signatory country in June 1980.

In considering these various measures, a clear distinction should be drawn between those export subsidies generally regarded as normal and legitimate instruments of development policy (although potentially countervailable), and those export subsidies which might place Korea in violation of international principles as set forth in the GATT and in the MTN Code on Subsidies and Countervailing Measures. ROKG is not a heavy subsidizer of export industries; the International Monetary Fund and the U.S. Treasury Department investigations responding to individual complaints have not found this to be the case. In only four instances--involving nonrubber footwear, ladies handbags, bicycle tires and tubes, and rubber footwear--have Treasury Department investigations unearthed subsidies which were found, in combination, to justify the imposition of countervailing duties. In March 1981, the Commerce Department decided to revoke the countervailing duty order on both non-rubber and rubber footwear and handbags. As a result of the administrative review, the Department of Commerce has decided that footwear and handbags have not benefitted from a net subsidy. Therefore at present imports of bicycle tires and tubes manufactured by Korea Inoue Kaisei remain as the sole outstanding countervailing duty case. Furthermore it has not been determined that any of the subsidies in question were of a nature to place Korea in violation of the MTN subsidies code, particularly when comparing them to the illustrative list of export subsidies annexed to the new subsidy agreement.

This is not to say that all Korean exports subsidies have been categorically cleared of being in possible violation of the new Code. The 90-day won currency preferential export loans (see below) appear to raise some questions in this regard. Whether such loans, or any of the other subsidies discussed below, place Korea in violation of the new code is a matter to be decided by the appropriate authorities, taking into account Korea's current LDC status.

With Korea's evolution towards advanced nation status, the general trend has been towards a phasing out of such subsidies as do exist. For example, the interest rate on the 90-day preferential export loans mentioned above was raised from 9% to 12% in January 1980. ROKG has the authority to increase the rate to 15% after June 30, 1982. It is more likely, however, that the Korean Government will keep the interest rate at 12% and strengthen certain other subsidies in the next year or two to help Korea's currently shaky export industries survive this difficult period of inflation and soft overseas markets. Fairly frequent manipulation either upwards or downwards is likely to render some of the details presented in this airgram out of date, because of possible changes in the numerous laws and regulations for the Korean export subsidies and incentives such as Trade Transaction Law, Foreign Exchange Control Laws, Customs Law, Internal Tax Law, including its enforcement decrees, rules, presidential decrees, administrative notices and announcements. For instance, recently the ROKG proposed revising the internal tax laws which contain comprehensive changes of tax rates for the special consumption tax and tax benefits for overseas construction. The draft bill has been submitted to the National Assembly.

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SUMMARY OF ROKG EXPORT SUBSIDIES
AND INCENTIVES

1. Financial Support

Through its control of the domestic financial structure, the Korean Government has established a broad range of short, medium and long-term financial instruments which offer preferential terms to Korean exporters, as opposed to firms which produce only for the domestic market. In judging the magnitude of the subsidy in the case of won currency loans, it should be kept in mind that the standard interest rate for short/medium term loans to finance domestic market operations is currently 18.5% (Prime) or 19.0% (standard). The list of preferential export loans is as follows:

a. Short-term won currency export loans. These are the famous 90-day loans provided at an annual interest rate of 12% for various purposes related to commodity exports, including production expenses, domestic procurement of finished goods, and procurement of raw materials. To obtain

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such loans exporters must present proof of export transactions in the form of an L/C or other export documents. (See Table 1).

b. Short-term foreign currency loans for overseas construction and services. Loan terms are the same as for won currency export loans. The difference lies in the range of purposes for which the loan can be obtained, and the type of documentation that must be provided. (See Table 2).

c. Short-term won currency loans for export of agricultural and marine products. The purpose of these loans is to finance the collection or stockpiling of certain designated agricultural and marine products destined for export. Again, terms are similar to the 90-day export loans (12% interest), but the maturity is as high as 240 days for certain products. (See Table 3).

d. Korean Export-Import Bank loans. The principle source of subsidized medium and long term export financing is, of course, the Export-Import Bank of Korea, which was established in 1976. Loans ranging from six months to 10 years maturity are provided to finance not only commodity exports but also technical services overseas (especially those related to construction activities) and overseas investment. Up to now, the greatest bulk of the bank's resources have been focused on supplier credits for the export of ships and industrial plants, but prospects are for greater diversification in the future. The basic annual interest rate is 8%. The Eximbank loans can cover up to 70% of the export contract amount. A total of 491,381 million won ($756 million) was committed in 1980, of which 90 percent was supplier credits. The Export-Import Bank also provides credit risk assessments, loans for import of certain raw materials destined for re-export, and information on competitive conditions in export markets.

e. Medium/long term foreign currency loans for import capital equipment and raw materials. Foreign exchange banks are authorized to use foreign currency funds (within a set ceiling) to help companies finance the import of capital goods and raw materials for certain designated industries, including export industries, the defense industry and other high-priority sectors.

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For imports destined for the defense and heavy/chemical industries (some of which are exporters), maturities of up to 10 years, with four years grace, are allowed; others are limited to five year maturities and two years grace. In certain cases loans may be for up to 100% of the import amount. Interest rates authorized by the government for this type of loan are as follows:

(1) Seven years or more: The cost of money plus 1.0%.
(2) Less than 7 years: LIBOR, SIBOR AND BIBOR(Bahrein) plus 1.25%.

2. Tariff Incentives

The tariff system has also been biased somewhat in favor of exports, through the use of two techniques: the tariff drawback mechanism and the tariff installment system.

a. Tariff drawbacks. When a Korean firm imports raw materials or components destined for incorporation into export products, it receives a rebate not only on the tariff paid in connection with those imports, but also on the special consumption tax, the defense tax, and the value added tax. In theory, the above tariff and taxes are paid at the time of importation and rebated after final product is exported. In practice the importer takes out a promissory note of two to four month duration, which is then cancelled if the exports are made within the specified period; if not, the Korean firm must pay the tariff and taxes in cash upon maturity of the promissory note and collect its rebate at the time of export.

b. Tariff installment system. Tariffs levied on the import of capital equipment designated by MOF may be paid by installments over a two to five year period, if the equipment is used for manufacturing export goods.

3. Tax Benefits

a. Value Added Tax (VAT): The value added tax of 10% is rebated for goods destined for export and for earnings from overseas services (e.g. construction).

b. Special Consumption Tax. There is an exemption of the special consumption tax (10-130%) for exported

goods, if applicable, and for tariff and tax rebates provided in connection with raw material imports as discussed above.

c. Corporation Tax. The following corporation tax benefits are provided in connection with exports: (i) costs related to the exploitation of overseas markets may be treated as an expense for tax purposes; (ii) the cost of maintaining the mandatory "reserve fund" for the exploitation of overseas markets (1-2% of foreign exchange earnings), and similar mandatory reserve funds for export losses and price changes (5% of inventory assets) may also be treated as an expense for tax purposes and (iii) taxes on earnings derived from the export of construction services, industrial plants and overseas port services receive a 50% tax deduction for up to five years. This benefit, however, is to be abolished beginning 1982, to be replaced with extended depreciation allowances, reserves for potential export losses (2% of FX earnings), and taxable income reduction on export earnings (2% of FX earnings).

d. Special depreciation allowance. Presently, Korean firms whose export earnings amount to more than 50% of total income are allowed regular depreciation plus 30%. Equipment used for overseas construction receives the same benefit. Firms whose exports account for less than 50% of total income receive a special depreciation allowance under the following formula:

$$(\text{Regular Depreciation} + 30\%) \times \left(\frac{\text{FX income}}{\text{Total income}} \times 2\right)$$

As described in preceding paragraph c, the ROKG is presently rewriting its tax laws to widen depreciation allowances and to authorize greater tax-free reserves beginning 1982.

4. Preferential Treatment for General Trading Companies

Each year, the Korean Government accords "General Trading Company" (GTC) status to publicly listed firms which have furnished at least 2% of total Korean exports in the previous year. In 1981 10 Korean firms were designated GTCs.

Designation as a GTC confers certain benefits above and

beyond those available to exporting firms generally. They are as follows:

-- GTCs are given priority when the Korean Government controls competition among Korean firms in international bidding;

-- GTCs are given special benefits with regard to membership in exporters' associations;

-- Unlike other Korean firms, GTCs are authorized to to send more than 10 staff members to overseas branches;

-- Unlike other Korean firms, GTCs are allowed to use standby letters of credit as a revolving credit account;

-- Unlike other Korean firms, GTCs are allowed to hold over $300,000 in foreign currency for overseas branches;

-- GTCs are exempt from the "end-user requirement", whereby imports of certain items must be accompanied by an end-user certificate documenting an immediate end-user need for the item.

5. Free Export Zones

There are two free export zones in Korea: The Masan Free Export Zone and the Iri Free Export Zone. To qualify for entrance into one of these zones, enterprises must produce exclusively for the export market. Owners could be either foreigners and Koreans.

In addition to being provided an industrial infrastructure at reasonable cost, firms located in a free export zone enjoy the following benefits:

-- An exemption from tariffs, defense tax, special consumption tax, and value added tax on all imports of raw materials, capital goods, and semi-finished goods;

-- An exemption from corporation tax, property and property acquisition tax for the first five years,

and a 50% reduction for the subsequent three years;

-- An exemption from the value added tax on output;

-- An exemption from taxes on dividends and surplus distribution accruing to foreign investors during the first five years, and a 50% deduction for the subsequent three years;

-- Exemption from income taxes on salaries of foreigners working in the zone during the first five years.

-- The same preferential loans that are generally available to exporters in Korea;

-- Free import of raw materials and capital equipment for the manufacture of export products;

-- Exemption from inspection procedures for export products;

-- Simplified customs procedures;

-- An effective exclusion of labor unions in the free export zone.

6. Special Export Promotion Fund

A special import surcharge of 0.35% (recently reduced from 0.4%) is collected on all imports into Korea, with the exception of those destined for Korean Government or military use, or re-export. Revenues collected in this manner are turned over to the Korea Traders Association (KTA), a government supported business organization, for use in export promotion activities.

According to the KTA budget for 1981, funds derived from the special import surcharge will amount to some $41 millio The $41 million is segregated in a Special Export Promotio Fund which is used to support a wide range of activities, including donations to KOTRA*(a quasi-governmental trade corporation), promotion of small and medium enterprises, trade fairs and exhibitions, donations to the Korean International Economic Institute (a quasi-government research organization), and other market development prog

* KOTRA - Korea Trade Promotion Corporation.

7. Other Forms of Support

a. Wastage allowances. Certain types of high-grade raw materials may be imported only if they are used for export production. However, the regulations provide for a "wastage allowance" ranging from 0.5% to 10%, which need not be re-exported. In practice, some of the supposedly "wasted" raw materials are said to be sold locally at relatively high prices, providing supplemental income to the exporting firm.

b. Export-Import Link System. In a similar fashion, permission to import certain high quality or popular foreign products is linked in various complex ways to the export performance of the importing firm. The firm in question can then supplement its income by selling the foreign products locally at high prices. Once rather widespread, the export-import link system has been narrowed down in recent years to only a handful of products.

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Table 1: Terms for Short-Term Won Currency Export Loans

Type of Loans	Preferential Interest Rate 1/ (Per Annum)	Loan Ceiling per Dollar of 2/ Exports (In Won)	Maximum Loan Period 3/
Loans for Production & Other Expenses	12% (15%)	530	90 days
Loans for Domestic Procurement of finished goods	12 (15)	530	30 days
Loans for Domestic Procurement of Raw Materials	12 (15)	580	90 days
Loans for Imports of Raw Materials	12 (15)	500	90 days

1/ ROKG may increase the rates to those shown in parenthesis after June 30, 1982.

2/ $1.00 = 683 Won as of September 26, 1981.

3/ Extensions are possible up to 180 days for certain types of exports.

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Table 2: Terms for Short-Term Foreign Currency Loans for Overseas Construction and Services

Type of Loans	Preferential Interest Rate* (Per Annum)	Loan Ceiling Per $ of Export (In Won)	Maximum Loan Peri:: (Days)
Loans for Expenses Others than Raw Materials	12% (15%)	530	90 days
Loans for Raw Materials Imports	12 (15)	500	90 days
Loans for Domestic Procurement of Raw Materials	12 (15)	580	90 days

* ROKG may increase the rates to those shown in parenthesis after June 30, 1982.

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Table 3: Terms for Short-Term Won Currency Loans for Export of Agricultural and Marine Products

Designated Items	Loan Period		Interest Rate* (%)
	Collection	Stockpiling	
Cocoon Spring	-	180	12 (15)
Fall	-	240	" "
Laver	90	90	" "
Agar-agar	90	180	" "
Mushrooms	-	90	" "
Songee	-	90	" "
Reed glass	90	180	" "
Cuttle fish	90	90	" "
Fusi Forme	90	90	" "
Silk Waste	-	180	" "
Oysters for Canning	-	180	" "
Glutinous Rice for Cookies	-	210	" "
White ginseng incl. tails	-	180	" "
Chestnuts for Canning	-	180	" "

* ROKG may increase the rates to those shown in parenthesis after June 30, 1982.

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National Council of Farmer Cooperatives
1800 MASSACHUSETTS AVENUE, N.W. • WASHINGTON, D.C. 20036 • TELEPHONE (202) 659-1525

February 2, 1982

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Speculation about the possibility of new export controls applicable to trade with the Soviet Union is further deteriorating already depressed agricultural prices and is consequently costing the American farmers millions of dollars.

We commend your strongly expressed policy against selective, unilaterally imposed, agricultural embargos. We respectfully suggest for your attention, however, that because about 70 percent of U.S. exports to the Soviet Union are agricultural products, the burden of an across-the-board embargo would, in reality, fall principally on the American farmer. Coupled with the weak economic condition of our agricultural sector such an embargo would have a devasting impact on farmers.

We therefore urge that trade sanctions be imposed only under the gravest of international conditions.

If the United States should face such circumstances and in your judgement, an embargo is justified, then we strongly urge that steps be taken to insure that the economic burden of such an action is shared by all Americans and does not fall disproportionately on the shoulders of our farmers.

Approved by the delegate body of the National Council of Farmer Cooperatives, representing the interests of over 2 million farmers in fifty states, and convened in annual conference in Washington, D.C., January 28, 1982.

Respectfully yours,

Kenneth D. Naden

Kenneth D. Naden
President

STATEMENT OF WILLIAM S. COHEN

Mr. Chairman, I appreciate the opportunity to present this statement concerning the condition of our agricultural trade.

For some time, I have been very interested in U.S. agricultural trade policy and in the continued development of overseas markets for our Nation's farmers. The precarious financial situation facing a sizable number of U.S. farmers this year makes the issue of foreign market development and domestic competitiveness even more important. Every member of this committee must recognize the problems our farmers face as a result of eroding profit levels, high interest rates, and intense and frequently unfair foreign competition in existing markets.

The importance of agricultural trade to the U.S. economy is unquestioned. One out of every $4 earned by our farmers results from exports. The U.S. presently exports 50 percent of the value of our total farm production. I was pleased that Agriculture Secretary Block, in recent testimony, reaffirmed our Government's commitment to promoting increased agricultural exports. However, there are many areas where barriers exist to undermine the intent of existing trade agreements and frustrate attainment of this objective. I congratulate the subcommittee for providing this opportunity to examine some of these restrictive trade practices.

I would like to discuss specific examples of practices and policies that affect agricultural industries in Maine, as well as in other areas of the country. One major U.S. agricultural industry adversely affected by unfair foreign trade practices is the poultry industry. In Maine alone, three of the State's five poultry processors have suspended operations in the past year. The poultry industry has faced increasing competition from European Economic Community producers in non-EEC countries. Until January 1980, European Community subsidies were granted for the exportation of whole chickens to Middle Eastern nations. Since then, however, these subsidies have been extended on a worldwide basis for whole chickens, in addition to chicken parts, turkeys, and turkey parts. In 1980, the EEC spent over $100 million for direct poultry export subsidies, compared to $3 million in 1967. Needless to say, these generous subsidies have placed U.S. producers, processors, and exports at a significant disadvantage. Our poultry industry must not only compete against foreign producers, but foreign treasuries as well. No amount of increased efficiency can compensate for this enormous advantage.

While the U.S. is by far the largest and most efficient producer of poultry products in the world, our share of export markets has decreased drastically. At the same time, EEC exporters have gained up to 90 percent share of the market. It is safe to conclude that the EEC producers could not garner such a large share of the world market without these subsidies.

I firmly believe that if it were competing on an equitable basis, the U.S. poultry industry could be a major factor in the intenational market. At present, our domestic production capacity is underutilized and poultry farmers nationwide have been losing ground because of domestic price declines and lack of profitability. Our domestic poultry industry was designed and capitalized to take advantage of an expanding domestic market, and, more importantly, the impressive potential growth of foreign markets. Yet our producers are shut out of world markets by an array of subsidies against which they cannot compete. The direct costs to our economy, as well as to the Federal Treasury, are indeed substantial.

In the case of potatoes, U.S. producers have consistently been prevented from effectively competing in foreign markets by not only EEC countries, but also by Canada. For example, in 1980, the Netherlands exported nearly 10 million hundredweight of potato seed and Canada exported nearly 3 million hundredweight. The United States, with by far the largest and most efficient production, exported only 225,000 hundredweight.

I have received numerous complaints from U.S. producers, eager to take advantage of the lucrative potato export market, concerning direct and indirect subsidies enjoyed by producers in competing countries. The Province of New Brunswick in Canada, for example, recently announded a 50 cent per hundredweight subsidy for undersized potato seed exported to new markets, and a 25 cent subsidy for existing export markets, Actions such as this continually frustrate domestic producers who try to compete for world markets.

The problem is compounded when major commodities, covered under Federal price supports, must compete with foreign supports that far exceed any justifiable level. The depressing effect on prices disrupts a farmer's production and marketing plans and ultimately affects the fuctioning of our own domestic price support mechanisms. At the same time that foreign producers enjoy direct and indirect export subsidies, they also receive governmental protection in their domestic markets. This

effectively prohibits U.S. producers, no matter how efficient, from gainig access to a particular market.

I am also concerned that our own domestic trade remedies are often either beyond the reach or, in fact, prohibitively expensive for most U.S. farm groups. Last November, the Governmental Affairs Subcommittee on Oversight of Government Management, which I chair, conducted hearings on the impact of subsidized Canadian competition on U.S. small border industries. Two of the industries represented were agricultural and they presented testimony illustrating the frustration that results from attempting to take advantage of trade remedies. The costs incurred in filing relief petitions were a primary concern, as were the complexities of available relief mechanisms.

Mr. Chairman, I believe that our domestic farm industries are capable of competing on an equal basis with any agricultural industry in the world, in both our domestic and in foreign markets. However, this will be possible unless U.S. agriculture is given equal opportunities through strong enforcement of existing trade agreements, coupled with administrative improvements in our trade remedies.

I urge the committee to seriously review the issues I have raised to insure that the principles of free—and fair—trade, which must underlie our international trading system, are preserved.

Thank you for this opportunity to present my views.

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